

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Senate Bill 610

BY SENATORS WELD, PALUMBO, TRUMP, AND WOELFEL

[Passed March 6, 2020; to take effect July 1, 2020]

1 AN ACT to repeal §29-22B-327 of the Code of West Virginia, 1931, as amended; to amend and
2 reenact §11-16-3 and §11-16-8 of said code; to amend and reenact §16A-6-3 of said code;
3 to amend and reenact §29-22B-503, §29-22B-504, and §29-22B-512 of said code; to
4 amend and reenact §60-1-5 of said code; to amend and reenact §60-3A-8 of said code;
5 to amend and reenact §60-7-4 and §60-7-5 of said code; and to amend and reenact §60-
6 8-16 and §60-8-17 of said code, all relating to removing resident manager requirements;
7 adding a manager requirement for West Virginia Alcohol Beverage Control Administration
8 applicants and licensees; removing residency requirements for granting permits under the
9 Medical Cannabis Act; and removing residency and United States citizenship
10 requirements for the West Virginia Lottery.

Be it enacted by the Legislature of West Virginia:

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
5 is being offered for sale or sold in West Virginia by a distributor who has been appointed in a valid
6 franchise agreement or a valid amendment thereto.
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
41 and conditions for a brewer and all of its distributors. Any approved amendment to the franchise
42 agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually
43 agree in writing to cancel a franchise agreement. A distributor terminated by a brewer as provided
44 in this article and the promulgated rules no longer has a valid franchise agreement. If a brewer
45 has reached an agreement to cancel a distributor or has terminated a distributor, then a brewer
46 may 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
51 only have one franchise distributor network: *Provided*, That a brewer that has acquired the
52 manufacturing, bottling, or other production rights for the sale of nonintoxicating beer at wholesale
53 from a selling brewer as specified in §11-16-21(a)(2) of this code shall continue to maintain and
54 be bound by the selling brewer's separate franchise distributor's network for any of its existing
55 brands, line extensions, and new brands.

56 (10) "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, wine,
57 beer, nonintoxicating beer, and other alcohol-related products, as defined pursuant to §60-3A-4
58 of this code.

59 (11) "Growler" means a container or jug that is made of glass, ceramic, metal, or other
60 material approved by the commissioner, that may be 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,
66 state, and local law unless it is located in an area of the motor vehicle physically separated from
67 the passenger compartment. The secure sealing of a growler requires the use of a tamper-
68 resistant seal, security tape, or other material, as approved by the commissioner, placed on or
69 over the growler's opening, which seal, security tape or other material is clearly marked with the
70 date of the secure sealing by the authorized licensee who is selling the growler.

71 (12) "Line extension" means any nonintoxicating beer product that is an extension of brand
72 or family of brands that is labeled, branded, advertised, marketed, promoted, or offered for sale
73 with the intent or purpose of being manufactured, imported, associated, contracted, affiliated, or
74 otherwise related to a brewer's existing brand through the use of a brewer, its subsidiaries, parent
75 entities, contracted entities, affiliated entities, or other related entities. In determining whether a
76 nonintoxicating beer product is a line extension, the commissioner may consider, but is not limited
77 to, the following factors: Name or partial name; trade name or partial trade name; logos;
78 copyrights; trademarks or trade design; product codes; advertising promotion; or pricing.

79 (13) "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
93 at 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
95 chapter 60 of this code does not include or embrace nonintoxicating beer nor any of the
96 beverages, 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-
109 18(a)(1) of this code, and is approved, in writing, by the commissioner to conduct a nonintoxicating
110 beer 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) "Original container" means the container used by a resident brewer or brewer at the
116 place of manufacturing, bottling, or otherwise producing nonintoxicating beer or nonintoxicating
117 craft beer for sale at wholesale.

118 (20) "Person" means and includes an individual, firm, partnership, limited partnership,
119 limited liability company, association, or corporation.

120 (21) "Private club" means a license issued pursuant to §60-7-1 *et seq.* of this code.

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

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

129 (24) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or
130 the commissioner's designee.

§11-16-8. Form of application for license; fee and bond; refusal of license.

1 (a) A license may be issued by the commissioner to any person who submits an
2 application, accompanied by a license fee and, where required, a bond, and states under oath:

3 (1) The name and residence of the applicant, the duration of such residency, and that the
4 applicant is 21 years of age. If the applicant is a firm, association, partnership, limited partnership,
5 limited liability company, or corporation, the application shall include the residence of the
6 members or officers. If a person, firm, partnership, limited partnership, limited liability company,
7 association, corporation, or trust applies for a license as a distributor, the person, or in the case
8 of a firm, partnership, limited partnership, limited liability company, association or trust, the
9 members, officers, trustees or other persons in active control of the activities of the limited liability

10 company, association or trust relating to the license, shall include the residency for these persons
11 on the application. All applicants and licensees must include a manager on the applicant's license
12 application, or a licensee's renewal application who must meet all other requirements of licensure,
13 including, but not limited to, United States citizenship or naturalization, passing a background
14 investigation, being at least 21 years of age, being a suitable person, being of good morals and
15 character, and other requirements, all as set forth in this article and the rules, promulgated
16 thereunder, all in the interest of protecting public health and safety and being a suitable applicant
17 or licensee. In order to maintain licensure, a licensee shall notify the commissioner immediately
18 of a change in managers. If the applicant is a trust or has a trust as an owner, the trustees or
19 other persons in active control of the activities of the trust relating to the license shall provide a
20 certification of trust as described in §44D-10-1013 of this code. This certification of trust shall
21 include the excerpts described in §44D-10-1013(e), of this code and shall further state, under
22 oath, the names, addresses, Social Security numbers and birth dates of the beneficiaries of the
23 trust and certify that the trustee and beneficiaries are 21 years of age or older. If a beneficiary is
24 not 21 years of age, the certification of trust must state that the beneficiary's interest in the trust
25 is represented by a trustee, parent, or legal guardian who is 21 years of age and who will direct
26 all actions on behalf of the beneficiary related to the trust with respect to the distributor until the
27 beneficiary is 21 years of age. Any beneficiary who is not 21 years of age or older shall have his
28 or her trustee, parent, or legal guardian include in the certification of trust and state under oath
29 his or her name, address, Social Security number, and birth date;

30 (2) The place of birth of applicant, that he or she is a citizen of the United States and of
31 good moral character and, if a naturalized citizen, when and where naturalized. If the applicant is
32 a corporation organized or authorized to do business under the laws of the state, the application
33 must state when and where incorporated, the name and address of each officer, and that each
34 officer is a citizen of the United States and a person of good moral character. If the applicant is a
35 firm, association, limited liability company, partnership, limited partnership, trust, or has a trust as

36 an owner, the application shall provide the place of birth of each member of the firm, association,
37 limited liability company, partnership or limited partnership and of the trustees, beneficiaries, or
38 other persons in active control of the activities of the trust relating to the license and that each
39 member or trustee, beneficiary or other persons in active control of the activities of the trust
40 relating to the license is a citizen of the United States, and if a naturalized citizen, when and where
41 naturalized, each of whom must qualify and sign the application;

42 (3) The particular place for which the license is desired and a detailed description thereof;

43 (4) The name of the owner of the building and, if the owner is not the applicant, that the
44 applicant is the actual and bona fide lessee of the premises;

45 (5) That the place or building in which is proposed to do business conforms to all applicable
46 laws of health, fire, and zoning regulations and is a safe and proper place or building not within
47 300 feet of a school or church measured from front door to front door, along the street or streets.
48 This requirement does not apply to a Class B license or to a place occupied by a beer licensee
49 so long as it is continuously so occupied. The prohibition against locating a proposed business in
50 a place or building within 300 feet of a school does not apply to a college or university that has
51 notified the commissioner, in writing, that it has no objection to the location of a proposed business
52 in a place or building within 300 feet of the college or university;

53 (6) That the applicant is not incarcerated and has not during the five years preceding the
54 date of said application been convicted of a felony;

55 (7) That the applicant is the only person in any manner pecuniarily interested in the
56 business so asked to be licensed and that no other person is in any manner pecuniarily interested
57 during the continuance of the license; and

58 (8) That the applicant has not during five years preceding the date of the application had
59 a nonintoxicating beer license revoked.

60 (b) In the case of an applicant that is a trust or has a trust as an owner, a distributor license
61 may be issued only upon submission by the trustees or other persons in active control of the

62 activities of the trust relating to the distributor license of a true and correct copy of the written trust
63 instrument to the commissioner for his or her review. Notwithstanding any provision of law to the
64 contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this
65 section is confidential and is not a public record and is not available for release pursuant to the
66 West Virginia Freedom of Information Act codified in §29B-1-1 *et seq.* of this code.

67 (c) The provisions and requirements of subsection (a) of this section are mandatory
68 prerequisites for the issuance and, if any applicant fails to qualify, the license shall be refused. In
69 addition to the information furnished in any application, the commissioner may make such
70 additional and independent investigation of each applicant, manager, and of the place to be
71 occupied as necessary or advisable and, for this reason, all applications, with license fee and
72 bond, must be submitted with all true and correct information. For the purpose of conducting such
73 independent investigation, the commissioner may withhold the granting or refusal to grant the
74 license for a 30-day period or until the applicant has completed the conditions set forth in this
75 section. If it appears that the applicant and manager meet the requirements in the code and the
76 rules, including, but not limited to, being a suitable person of good reputation and morals; having
77 made no false statements or material misrepresentations; involving no hidden ownership; and
78 having no persons with an undisclosed pecuniary interest contained in the application; and if there
79 are no other omissions or failures by the applicant to complete the application, as determined by
80 the commissioner, the commissioner shall issue a license authorizing the applicant to sell
81 nonintoxicating beer or nonintoxicating craft beer.

82 (d) The commissioner may refuse a license to any applicant under the provisions of this
83 article if the commissioner is of the opinion:

84 (1) That the applicant or manager is not a suitable person to be licensed;

85 (2) That the place to be occupied by the applicant is not a suitable place or is within 300
86 feet of any school or church measured from front door to front door along the street or streets.

87 This requirement does not apply to a Class B licensee or to a place now occupied by a beer

88 licensee so long as it is continuously so occupied. The prohibition against locating any such place
89 within 300 feet of a school does not apply to a college or university that has notified the
90 commissioner, in writing, that it has no objection to the location of any such place within 300 feet;

91 (3) That the manager, owner, employee, or person is in a contractual relationship to
92 provide goods or services to the applicant is an active employee of the commissioner; or

93 (4) That the license should not be issued for reason of conduct declared to be unlawful by
94 this article.

CHAPTER 16A. MEDICAL CANNABIS ACT.

ARTICLE 6. MEDICAL CANNABIS ORGANIZATIONS.

§16A-6-3. Granting of permit.

1 (a) The bureau may grant or deny a permit to a grower, processor, or dispensary. In
2 making a decision under this subsection, the bureau shall determine that:

3 (1) The applicant will maintain effective control of and prevent diversion of medical
4 cannabis.

5 (2) The applicant will comply with all applicable laws of this state.

6 (3) The applicant is ready, willing, and able to properly carry on the activity for which a
7 permit is sought.

8 (4) The applicant possesses the ability to obtain in an expeditious manner sufficient land,
9 buildings, and equipment to properly grow, process, or dispense medical cannabis.

10 (5) It is in the public interest to grant the permit.

11 (6) The applicant, including the financial backer or principal, is of good moral character
12 and has the financial fitness necessary to operate.

13 (7) The applicant is able to implement and maintain security, tracking, recordkeeping, and
14 surveillance systems relating to the acquisition, possession, growth, manufacture, sale, delivery,
15 transportation, distribution, or the dispensing of medical cannabis as required by the bureau.

- 16 (8) The applicant satisfies any other conditions as determined by the bureau.
- 17 (b) *Nontransferability*. — A permit issued under this chapter shall be nontransferable.
- 18 (c) *Privilege*. — The issuance or renewal of a permit shall be a revocable privilege.
- 19 (d) *Dispensary location*. — The bureau shall consider the following when issuing a
20 dispensary permit:
- 21 (1) Geographic location;
- 22 (2) Regional population;
- 23 (3) The number of patients suffering from serious medical conditions;
- 24 (4) The types of serious medical conditions;
- 25 (5) Access to public transportation;
- 26 (6) Approval by local health departments;
- 27 (7) Whether the county has disallowed the location of a grower, processor, or dispensary;
- 28 and
- 29 (8) Any other factor the bureau deems relevant.
- 30 (e) *Application procedure*. — The bureau shall establish a procedure for the fair and
31 objective evaluation of all applications for all medical cannabis organization permits. The
32 evaluations shall score each applicant numerically according to standards set forth in this chapter.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-327. Resident of this state defined.

1 [Repealed.]

§29-22B-503. Additional qualifications for an applicant for an operator's license.

- 1 (a) No operator's license or license renewal may be granted unless the Lottery
2 Commission has determined that, in addition to the general requirements set forth in §29-22B-
3 502 of this code, the applicant satisfies all of the following qualifications:

4 (1) The applicant has demonstrated the training, education, business ability, and
5 experience necessary to establish, operate, and maintain the business for which the license
6 application is made;

7 (2) The applicant has secured any necessary financing for the business for which the
8 license application is made, and the financing: (A) Is from a source that meets the qualifications
9 of this section; and (B) is adequate to support the successful performance of the duties and
10 responsibilities of the licensee. A licensee shall request commission approval of any change in
11 financing or leasing arrangements at least 30 days before the effective date of the change;

12 (3) The applicant has disclosed all financing or refinancing arrangements for the
13 purchase, lease, or other acquisition of video lottery terminals and associated equipment in the
14 degree of detail requested by the Lottery Commission;

15 (4) The applicant has filed with the Lottery Commission a copy of any current or proposed
16 agreement between the applicant and any manufacturer for the sale, lease, or other assignment
17 to the operator of video lottery terminals, the electronic computer components of the terminals,
18 the random number generators of the terminals, or the cabinets in which they are housed; and

19 (5) The applicant does not hold any other license under this article, §19-23-1 *et seq.* of
20 this code, §29-22-1 *et seq.* of this code, §29-22A-1 *et seq.* of this code, or §29-25-1 *et seq.* of this
21 code, except that an applicant may also be licensed as a service technician. In addition, an
22 applicant may also be licensed as a limited video lottery retailer: *Provided*, That a licensed
23 operator that also is a licensed retailer may operate limited video lottery terminals as a limited
24 video lottery retailer at no more than 10 locations: *Provided, however*, That the director may
25 authorize the operator to operate limited video lottery terminals as a limited video lottery retailer
26 at more than 10 locations if the applicant provides sufficient justification that such approval is
27 necessary to sustain state revenues without a detrimental impact on public interest, further shows
28 that a qualified retailer is unavailable and a good faith effort to identify a qualified retailer was
29 made prior to the request, and an explanation of other relevant information supporting the request.

30 (b)(1) A person or a member of his or her immediate family who has an ownership interest
31 in a business entity that submits an application for an operator's license may not: (A) Submit an
32 application for another operator's license as an individual; (B) serve as an officer, director,
33 member, or partner of a business entity that submits an application for another operator's license;
34 or (C) have an ownership interest in any other business entity that submits an application for an
35 operator's license.

36 (2) Business entities that have common owners or common officers, directors, members,
37 or partners may not hold more than one operator's license.

**§29-22B-504. Additional qualifications for an applicant for a limited video lottery retailer's
license.**

1 No limited video lottery retailer's license or license renewal may be granted unless the
2 Lottery Commission has determined that, in addition to the general requirements set forth in §29-
3 22B-502 of this code, the applicant satisfies all of the following qualifications:

4 (1) The applicant has disclosed to the Lottery Commission the identity of each person
5 who has control of the applicant, as control is described in §29-22B-507 of this code;

6 (2) The applicant holds either: (A) A valid license issued under §60-7-1 *et seq.* of this
7 code to operate a private club; (B) a valid Class A license issued under §11-16-1 *et seq.* of this
8 code to operate a business where nonintoxicating beer is sold for consumption on the premises;
9 or (C) both licenses;

10 (3) The applicant has demonstrated the training, education, business ability, and
11 experience necessary to establish, operate and maintain the business for which the license
12 application is made;

13 (4) The applicant has secured any necessary financing for the business for which the
14 license application is made and the financing: (A) Is from a source that meets the qualifications
15 of this section; and (B) is adequate to support the successful performance of the duties and
16 responsibilities of the licensee;

17 (5) The applicant has disclosed all financing or refinancing arrangements for placement
18 on the applicant's premises of video lottery terminals and associated equipment in the degree of
19 detail requested by the Lottery Commission;

20 (6) The applicant has filed with the Lottery Commission a copy of any current or proposed
21 agreement between the applicant and a licensed operator for the placement on the applicant's
22 premises of video lottery terminals;

23 (7) The applicant has filed with the Lottery Commission a copy of any current or proposed
24 agreement between the applicant and a licensed operator or other person for the servicing and
25 maintenance of video lottery terminals by licensed service technicians; and

26 (8) The applicant does not hold any other license under this article, §19-23-1 *et seq.* of
27 this code, or §29-22A-1 *et seq.* of this code, or §29-25-1 *et seq.* of this code except that an
28 applicant may also be licensed as a service technician. In addition, an applicant may also be
29 licensed as an operator, subject to the provisions of §29-22B-503(a)(6) of this code.

§29-22B-512. Review of continuing eligibility for license.

1 The Lottery Commission shall determine on a continuing basis the eligibility of licensees
2 to hold a license.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

1 For the purposes of this chapter:

2 (1) "Alcohol" means ethyl alcohol whatever its origin and shall include synthetic ethyl
3 alcohol but not denatured alcohol.

4 (2) "Alcoholic liquor" includes alcohol, beer, wine, and spirits, and any liquid or solid
5 capable of being used as a beverage, but shall not include nonintoxicating beer.

6 (3) "An agency" means a drugstore, grocery store, or general store designated by the
7 commission as a retail distributor of alcoholic liquor for the West Virginia Alcohol Beverage Control
8 Commission.

9 (4) "Beer" means any beverage obtained by the fermentation of barley, malt, hops, or any
10 other similar product or substitute, and containing more alcohol than that of nonintoxicating beer.

11 (5) "Brewery" means an establishment where beer is manufactured or in any way
12 prepared.

13 (6) "Commissioner" or "commission" means the West Virginia Alcohol Beverage Control
14 Commissioner.

15 (7) "Department" means the organization through which the commission exercises powers
16 imposed upon it by this chapter.

17 (8) "Distillery" means an establishment where alcoholic liquor other than wine or beer is
18 manufactured or in any way prepared.

19 (9) "Intoxicated" means a person's faculties are impaired by alcohol or other substance to
20 the point where physical or mental control or both are markedly diminished.

21 (10) "Manager" means an individual who is the applicant's or licensee's on-premises
22 employee, member, partner, shareholder, director, or officer who meets the licensure
23 requirements of §11-16-1 *et seq.* of this code and rules promulgated thereunder who actively
24 manages, conducts, and carries on the day-to-day operations of the applicant or licensee with full
25 and apparent authority or actual authority to act on behalf of the applicant or licensee. Such duties
26 include but are not limited to: coordinating staffing; reviewing and approving payroll; ordering and
27 paying for inventory, such as nonintoxicating beer, wine, and liquor, as applicable; and managing
28 security staff, security systems, video and other security equipment; and any further acts or
29 actions involved in managing the affairs of the business, on behalf of owners, partners, members,
30 shareholders, officers, or directors.

31 (11) "Manufacture" means to distill, rectify, ferment, brew, make, mix, concoct, process,
32 blend, bottle, or fill an original package with any alcoholic liquor.

33 (12) "Manufacturer" means any person engaged in the manufacture of any alcoholic liquor,
34 and among others includes a distiller, a rectifier, a wine maker, and a brewer.

35 (13) "Nonintoxicating beer" means any beverage obtained by the fermentation of barley,
36 malt, hops, or similar products or substitute, and containing not more alcohol than that specified
37 by §11-16-2 of this code.

38 (14) "Original package" means any closed or sealed container or receptacle used for
39 holding alcoholic liquor.

40 (15) "Person" means an individual, firm, partnership, limited partnership, corporation, or
41 voluntary association.

42 (16) "Powdered alcohol" means an alcohol manufactured in a powder or crystalline form
43 for either direct use or reconstitution as an alcoholic liquor or food. For purposes of this chapter,
44 powdered alcohol excludes any material intended for industrial purposes.

45 (17) "Public place" means any place, building, or conveyance to which the public has, or
46 is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies,
47 and corridors of hotels and any highway, street, lane, park, or place of public resort or amusement:
48 *Provided*, That the term "public place" shall not mean or include any of the above-named places
49 or any portion or portions thereof which qualify and are licensed under the provisions of this
50 chapter to sell alcoholic liquors for consumption on the premises: *Provided, however*, That the
51 term "public place" shall not mean or include any legally demarcated area designated solely for
52 the consumption of beverages and freshly prepared food that directly connects and adjoins any
53 portion or portions of a premise that qualifies and is licensed under the provisions of this chapter
54 to sell alcoholic liquors for consumption thereupon: *Provided further*, That the term "public place"
55 shall not include a facility constructed primarily for the use of a Division I, II, or III college or
56 university that is a member of the National Collegiate Athletic Association, or its successor, and

57 used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium which
58 holds a special license to sell wine pursuant to the provisions of §60-8-3 of this code, in the
59 designated areas of sale and consumption of wine and other restrictions established by that
60 section and the terms of the special license issued thereunder.

61 (18) "Sale" means any transfer, exchange, or barter in any manner or by any means, for
62 a consideration, and shall include all sales made by a principal, proprietor, agent, or employee.

63 (19) "Selling" includes solicitation or receipt of orders; possession for sale; and possession
64 with intent to sell.

65 (20) "Spirits" means any alcoholic beverage obtained by distillation and mixed with potable
66 water and other substances in solution and includes brandy, rum, whiskey, cordials, and gin.

67 (21) "State liquor store" means a store established and operated by the commission under
68 this chapter for the sale of alcoholic liquor in the original package for consumption off the
69 premises.

70 (22) "Wine" means any alcoholic beverage obtained by the fermentation of the natural
71 content of fruits, or other agricultural products, containing sugar.

72 (23) "Winery" means an establishment where wine is manufactured or in any way
73 prepared.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-8. Retail license application requirements; retail licensee qualifications.

1 (a) Prior to or simultaneously with the submission of a bid for a retail license or the payment
2 of a purchase option for a Class A retail license, each applicant shall file an application with the
3 commissioner, stating under oath, the following:

4 (1) If the applicant is an individual, his or her name and residence address;

5 (2) If the applicant is other than an individual, the name and business address of the
6 applicant; the state of its incorporation or organization; the names and residence addresses of
7 each executive officer and other principal officer, partner, or member of the entity; a copy of the

8 entity's charter or other agreement under which the entity operates; the names and residence
9 addresses of any person owning, directly or indirectly, at least 20 percent of the outstanding stock,
10 partnership, or other interests in the applicant; and all applicants and licensees must list a
11 manager on the applicant's license application, or a licensee's renewal application, and further
12 that the manager shall meet all other requirements of licensure, including, but not limited to, United
13 States citizenship or naturalization, passing a background investigation, being at least 21 years
14 of age, being a suitable person, being of good morals and character, and other requirements, all
15 as set forth in the code and the legislative rules, in order for the manager to be able to meet and
16 conduct any regulatory matters, including, but not limited to, licensure or enforcement matters
17 related to the applicant or licensee all in the interest of protecting public health and safety and
18 being a suitable applicant or licensee. In order to maintain active licensure, any change by a
19 licensee in any manager listed on an application must be made immediately to the commissioner,
20 in order to verify that the new manager meets licensure requirements;

21 (3) That the applicant and manager have never been convicted in this state or any other
22 state of any felony or other crime involving moral turpitude or convicted of any felony in this or
23 any other state court or any federal court for a violation of any state or federal liquor law, and if
24 the applicant is other than an individual, that none of its executive officers, other principal officers,
25 partners, or members, or any person owning, directly or indirectly, at least 20 percent of the
26 outstanding stock, partnership, or other interests in the applicant, has been convicted; and

27 (4) That the applicant and the manager, each is a United States citizen of good moral
28 character and, if a naturalized citizen, when and where naturalized; and, if a corporation organized
29 and authorized to do business under the laws of this state, when and where incorporated, with
30 the name and address of each officer; that each officer is a citizen of the United States and a
31 person of good moral character; and if a firm, association, partnership, or limited partnership, that
32 each member is a citizen of the United States and, if a naturalized citizen, when and where
33 naturalized, each of whom must sign the application.

34 (b) An applicant and manager shall provide the commissioner any additional information
35 requested by the commissioner including, but not limited to, authorization to conduct a criminal
36 background and credit records check.

37 (c) Whenever a change occurs in any information provided to the commissioner, the
38 change shall immediately be reported to the commissioner in the same manner as originally
39 provided.

40 (d) The commissioner shall disqualify each bid submitted by an applicant under §60-3A-
41 10 of this code and no applicant shall be issued or eligible to hold a retail license under this article,
42 if:

43 (1) The applicant has been convicted in this state of any felony or other crime involving
44 moral turpitude or convicted of any felony in this or any other state court or any federal court for
45 a violation of any state or federal liquor law; or

46 (2) Any executive officer or other principal officer, partner, or member of the applicant, or
47 any person owning, directly or indirectly, at least twenty percent of the outstanding stock,
48 partnership, or other interests in the applicant, has been convicted in this state of any felony or
49 other crime involving moral turpitude or convicted of any felony in this or any other state court or
50 any federal court for a violation of any state or federal liquor law.

51 (e) The commissioner shall not issue a retail license to an applicant which does not hold
52 a license issued pursuant to federal law to sell liquor at wholesale.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-4. Application for license; information required; verification; application to be accompanied by fees; bond; college fraternities and sororities ineligible for license; racial discrimination by applicants prohibited.

1 (a) Application for a license to operate a private club shall be made on such form as may
2 be prescribed by the commissioner and shall include:

3 (1) The name and residence of the applicant and list the same for its manager;

4 (2) If the applicant is an unincorporated association, the names and residence addresses
5 of the members of its governing board;

6 (3) If the applicant is a corporation, the names and residence addresses of its officers and
7 directors;

8 (4) The place at which the applicant will conduct its operations and whether the same is
9 owned or leased by the applicant;

10 (5) The number of members of the applicant;

11 (6) A listed manager on the applicant's license application, or a licensee's renewal
12 application, and further that the manager shall meet all other requirements of licensure, including,
13 but not limited to, United States citizenship or naturalization, passing a background investigation,
14 being at least 21 years of age, being a suitable person, being of good morals and character, being
15 capable of operating a bona fide private club of good reputation in the community, and other
16 requirements, all as set forth in the code and the legislative rules, in order for the manager to be
17 able to meet and conduct any regulatory matters, including, but not limited to: Licensure or
18 enforcement matters related to the applicant or licensee all in the interest of protecting public
19 health and safety and being a suitable applicant or licensee. In order to maintain active licensure,
20 any change by a licensee in any manager listed on an application shall be made immediately to
21 the commissioner, in order to verify that the new manager meets licensure requirements;

22 (7) The name or names of any national organizations with which the applicant is affiliated
23 and the nature of the affiliation;

24 (8) The size and nature of the dining and kitchen facilities operated by applicant;

25 (9) Accurate and complete ownership information;

26 (10) An attestation that the information in the application is true and accurate; and

27 (11) Such other information as the commissioner may reasonably require of the applicant
28 and manager which shall include, but not be limited to, the criminal records, if any, of each

29 member of the applicant's governing board or its officers and directors who have been convicted
30 of a felony or a crime involving moral turpitude.

31 (b) The application shall be verified by the manager, each member of the governing board
32 of the applicant if an unincorporated association, or, if the applicant is a corporation, by each of
33 its officers and all members of its board of directors. The application shall be accompanied by the
34 license fee hereinafter prescribed and by a bond of the applicant in the penal sum of \$5,000 with
35 a corporate surety authorized to transact business in the state of West Virginia, payable to the
36 State of West Virginia, which bond shall be conditioned on the payment of all fees herein
37 prescribed and on the faithful performance of and compliance with the provisions of this article.

38 (c) Under no circumstance may any college fraternity or sorority be issued a license to
39 operate a private club.

40 (d) No license to operate a private club may be issued to applicants who discriminate
41 against any person or group of persons because of race or color of the person or group of persons.

§60-7-5. Investigation by commissioner; issuance or refusal of license; special requirements for clubs at parks and airports; form of license; license valid at one location only; expiration and renewal; transferability.

1 (a) Upon receipt of a completed application referred to in §60-7-4 of this code, together
2 with the accompanying fee and bond, the commissioner shall conduct an investigation to
3 determine the accuracy of the matters contained in such completed application and whether
4 applicant is a bona fide private club of good reputation in the community in which it shall operate.
5 For the purpose of conducting such investigation, the commissioner may withhold the granting or
6 refusal to grant the license for a period not to exceed 30 days or until the applicant has completed
7 the conditions set forth in this article and in §60-7-4(a) of this code, all as determined by the
8 commissioner. If it appears that the applicant is a bona fide private club of good reputation in the
9 community in which it shall operate and that the applicant and the manager in the application or
10 a licensee and manager in the renewal application, subject to investigation set forth in §60-7-4 of

11 this code, have made no false statement, no material misrepresentations, no hidden ownership,
12 or persons with an undisclosed pecuniary interest, and no omissions or failures to disclose in the
13 application, as determined by the commissioner shall issue a license authorizing the applicant to
14 sell alcoholic liquors as provided in §60-7-3 of this code, and otherwise shall refuse to issue the
15 license, except that in the case of an application by a corporation or association to operate a
16 private club in connection with:

17 (1) A state park, the Director of the Department of Natural Resources shall grant his or her
18 approval before the license can be issued; or

19 (2) A county or municipal park, or an airport, the authority governing the park or airport
20 shall grant its approval before the license can be issued.

21 A license may not be issued for a private club in any state park unless a dining facility
22 comparable to the dining facility for the proposed private club will be available to serve meals to
23 the general public. A license may not be issued for a private club in any county or municipal park,
24 or an airport, unless a dining facility comparable to the dining facility for the proposed private club
25 will be available to serve meals to the general public.

26 (b) Upon refusal to issue such license the commissioner shall make and enter an order
27 denying the application, which denial and refusal shall be final unless a hearing is requested in
28 accordance with the provisions of §60-7-13 of this code. When the refusal or denial becomes final
29 the commissioner shall forthwith refund to the applicant his or her fees and bond accompanying
30 the application.

31 (c) The license shall be of such form and design as the commissioner may prescribe by
32 reasonable rule or regulation and shall authorize the licensee to sell alcoholic liquors at only one
33 location.

34 (d) The license shall expire on June 30 next following the date of issue and may be
35 renewed upon the same showing as required for the issuance of the initial license, together with
36 the payment of fees and filing of the bond as required by this article.

37 (e) A license issued under the provisions of this article may not be transferable.

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
11 of 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
31 the 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,
37 and 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
45 a 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
51 that the trustee and beneficiaries are 21 years of age or older. If a beneficiary is not 21 years of
52 age, the certification of trust must state that the beneficiary's interest in the trust is represented
53 by a trustee, parent, or legal guardian who is 21 years of age and who will direct all actions on
54 behalf of the beneficiary related to the trust with respect to the distributor until the beneficiary is
55 21 years of age. Any beneficiary who is not 21 years of age or older shall have his or her trustee,
56 parent, or legal guardian include in the certification of trust and state under oath his or her name,
57 address, Social 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.

§60-8-17. License issuance or refusal; terms of license.

1 (a) Upon receipt of the completed application, fee, and bond if required, the commissioner
2 shall conduct any investigation he or she considers necessary to determine the accuracy of the
3 matters contained in the completed application for the applicant or manager. For the purposes of
4 conducting such investigation, the commissioner may withhold the granting or refusal to grant a
5 license for a period not to exceed 30 days or until the applicant has completed the conditions set
6 forth in §60-8-16 of this code. If it appears that the applicant, and the manager in the application
7 or a licensee and manager in the renewal application, subject to investigation set forth in this
8 section, is a suitable person, is located at a suitable premise, there is no false statement, no
9 material misrepresentations, no hidden ownership, no persons with an undisclosed pecuniary
10 interest contained in the application, and that the issuance of the license would not be in conflict
11 with any of the provisions of this chapter, the commissioner shall issue the license. Otherwise the
12 commissioner shall refuse to issue the license.

13 (b) The commissioner shall refuse the license of any applicant if he or she finds that any
14 such applicant or manager is not a suitable person, that the place of business of the applicant is
15 not a suitable place, or that the applicant has not complied with the provisions of this chapter.
16 Upon refusal to issue the license, the commissioner shall enter an order refusing such application.
17 The refusal is final unless a hearing is requested in accordance with the provisions of §60-8-18
18 of this code. When the refusal becomes final the commissioner shall immediately refund to the
19 applicant his or her fees and bond accompanying the application.

20 (c) The license expires on June 30 next following the date it was issued and may be
21 renewed upon the same showing as required for the issuance of the initial license, together with
22 the payment of fee and filing of any bond required by this article.

23 (d) A licensee that fails to complete a renewal application and make payment of its annual
24 license fee in renewing its license on or before June 30 of any subsequent year, after initial
25 application, shall be charged an additional \$150 reactivation fee. The licensee must pay the
26 applicable full-year annual license fee and the reactivation fee prior to the processing of any

27 renewal application. A licensee who continues to operate upon the expiration of its license is
28 subject to all fines, penalties, and sanctions available in §11-16-23 of this code, as determined by
29 the commissioner.

30 (e) The license may not be transferred to another person, but the location of the premises
31 to which the license relates may be changed with the written consent of the commissioner, if the
32 new location satisfies the requirements of this article upon an initial application and payment of a
33 new application fee.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, Senate Committee

.....
Chairman, House Committee

Originated in the Senate.

To take effect July 1, 2020.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2020.

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Governor