

Title 115
Legis by rule

~~WEST VIRGINIA ADMINISTRATIVE REGULATIONS~~

ALCOHOL BEVERAGE CONTROL COMMISSIONER

~~CHAPTER 60-2~~

SERIES ~~IR 2~~

Private Club License

FILED IN THE OFFICE OF
A. JAMES MANCHI
SECRETARY OF STATE
THIS DATE 4/7/83
Administrative Law Division

Section 1. General

1.01 Scope - This regulation amends existing regulation 2.02 by establishing reasons the Commissioner may use in refusing to grant a license for a private club.

1.02 Authority - This regulation is issued under authority of West Virginia Code, Chapter 29A, Article 3; Chapter 60, Article 7, Section 10; and Chapter 64, Article 2, Section 60 (7) (2).

1.03 Effective Date - This regulation is to become effective on the 10th day of May, 1983.

1.04 Filing Date - This regulation was filed on the 7th day of April, 1983.

Section 2. LICENSURE

2.01 License Application - The application for license to operate a private club shall include the following:

- (1) The name of the applicant.

(2) The Place at which such applicant will conduct its operations, whether the same is owned or leased by applicant; and if leased, from whom, giving names and addresses of all lessors.

(3) If such applicant be an unincorporated association, the names and addresses of members of its governing board.

(4) If such applicant be a corporation, the names and addresses of its officers and directors.

(5) The size and nature of the dining and kitchen facilities operated by applicant and the specific proportions of any structure used in conjunction with other purposes that will constitute the private club.

(6) Arrest record, if any, of the applicant and if the applicant be a corporation or association, the arrest, if any, record of the officers, directors, employees and the manager or steward including disposition of same; (All applicants will be checked through the Criminal Identification Bureau of the Department of Public Safety).

(7) Residency of applicants: No licenses shall be given to any applicant who has been a resident of West Virginia for a period of less than one year. (If the applicant be a corporation the same would apply unless a majority of the incorporators or a majority of the board of directors have been residents for a period of one year.

If the applicant be an association, the same would apply unless a majority of the founders or Governing Board have been residents for a period of one year).

(8) A statement of purpose or purposes for which the club is organized (Social, recreation, benevolent, charitable, fraternal or profit).

(9) How long the club has been in existence prior to the date of the application.

(10) What national organization it is affiliated with, if any, and the date of affiliation and nature thereof?

(11) Number of employees.

(12) Number of members of the applicant.

(13) West Virginia Consumer Sales Tax Identification Number.

(14) West Virginia Business Franchise Tax Number.

(15) West Virginia Health Department Permit Number to operate a restaurant.

(16) Type of license applied for.

(17) Application shall only be made on ABCC Form No. 192. Said form must be completed in its entirety and failure to complete all questions thereon shall constitute grounds for refusal to grant a license.

(18) Is the applicant the holder of a federal gambling stamp?

(19) Is the applicant the holder of a Retail Liquor Dealer Special Tax Stamp?

2.02. Refusal of License - No license shall be issued by the Commissioner to any club:

(1) That is located on any college campus, state university campus or branch thereof.

(2) That is the holder of a federal gambling stamp or whose manager or employee is a holder thereof.

(3) Other than those specified in Chapter 60, Article 7, Section 2 (a) (1) (2) of the West Virginia Code of 1931 as amended that discriminate against any person or group of persons.

(4) That submits an application for license that contains any false statement, and any statement found to be false after the granting of said license shall be grounds for revocation or suspension

of said license.

(5) That is not a bona fide private club of good reputation in the community in which it shall operate. For purposes of making such a determination, the Commissioner shall take into consideration whether the ownership and management of the private club will involve suitable persons and whether the premises to be used by the private club are a suitable place.

(a) For purposes of this regulation, the commissioner may refuse to grant any license if he has reasonable cause to believe, as indicated by documented evidence, that the applicant, or any officer, director or manager, thereof, or shareholder owning twenty percent or more of its capital stock, beneficial or otherwise, or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or part:

(1) Is not a person of good moral character or repute;

(2) Has maintained a noisy, loud, disorderly or unsanitary establishment;

(3) Has demonstrated, either by his police record or by his record as former licensee under chapter sixty or chapter eleven, article sixteen of the West Virginia code, a lack of respect for law and order, generally, or for the laws and rules governing the sale and distribution of alcoholic beverages or nonintoxicating beer;

(4) Has the general reputation of drinking alcoholic beverages to excess, or is addicted to the use of narcotics;

(5) Has misrepresented a material fact in applying to the commissioner for a license.

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For purposes of this regulation, the commissioner shall refuse to grant any license if he has reasonable cause to believe, as indicated by documented evidence that the applicant, or any officer, director or manager thereof, or shareholder owning twenty percent or more of its capital stock, beneficial or otherwise, or other person conducting or managing the affairs to the applicant or of the proposed licensed premises, in whole or part:

(1) Is not eighteen years of age or older;

(2) Has been convicted of a felony or other crime involving moral turpitude, and upon such conviction the applicant shall not be eligible for licensure within five years next preceding successful completion of all conditions of probation, discharge from parole supervision or expiration of sentence;

(3) Has been convicted of violating liquor laws of any state or the United States, and upon such conviction the applicant shall not be eligible for licensure within five years next preceding successful completion of all conditions of probation, discharge from parole supervision or expiration of sentence;

(4) Has had any license revoked under the liquor laws of any state or the United States within five years next preceding the filing date of the application;

(5) Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business which have not been disclosed;

(6) Is a person to whom alcoholic beverages may not be sold under the provisions of chapter sixty of the West Virginia code;

(7) Has been adjudicated an incompetent;

(8) Is an officer or employee of the alcohol beverage control commissioner

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of West Virginia; or

(9) Is violating or allowing the violation of any provision of chapter sixty, chapter sixty-one or chapter eleven, article sixteen of the code in its establishment at the time its application for a license is pending.

(b) No license shall be issued by the Commissioner to a Club if the place to be occupied by the applicant:

(1) Does not conform to the requirements of applicable laws of the State with respect to sanitation, health, construction or equipment, or to any similar requirements established by the regulations of the Commissioner.

(2) Is so located that violations of Chapter 60 of the West Virginia Code, or of the rules and regulations of the Commissioner, or the laws of this State relating to peace and good order would result from the issuance of such license and operation thereunder by the applicant.

(3) Is so situated with respect to any church, hospital, school, college or university, public or private playground or other similar recreational facilities, or any State, local or federal government-operated facility, that the operation of such place under such license will adversely affect or interfere with normal, orderly conduct of the affairs of such facilities or institutions.

(4) Is so situated with respect to any residence or residential area that the operation of such place under such license will adversely affect real property values or substantially interfere with the usual quietude and tranquility of such residential area.

(c) The Commissioner may refuse to issue a license if he shall have reasonable ground to believe that the number of licenses existent in the locality is such that the issuance of an additional license would be detrimental to the

THIS DATE 4/7/83

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interests, morals, safety, or welfare of the public, and, in reaching his conclusion in this respect, the Commissioner may consider the character of, the population of, the number of similar licensees in the particular town, city or county and the immediate neighborhood concerned, and the effect which a new license may have on such town, city, county or neighborhood in conforming with the purposes of the Liquor Control Act.

(d) In the process of determining whether or not a license should issue, the Commissioner must investigate the accuracy of all allegations which could lead to denial of the license.

2.03 Type of License - The Commissioner, upon a decision to grant a license will issue said license in one of two (2) categories:

Type I. This will be a private club license issued to nationally recognized fraternal or veterans' organization, and any other non-profit social club, all of the same being operated exclusively for the benefit of its members and which organization pays no part of its income to shareholders or individual members, and which organization maintains on its premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests.

Type II. This will be issued to social organizations or corporations operated for legitimate purposes and for profit, which pay part of its income to shareholders or individual members and which organization or corporation maintains on its premises a suitable kitchen and dining facility with related equipment, and employs a sufficient number of persons for the serving of meals to members and their guests at all times during the hours of operation, the same being hereinafter specified.

As to each of the categories above, a license will only be granted upon a certification that the general public is not and will not be admitted on the premises, and only duly elected or approved dues paying.

members, in good standing, and their guests, while in the company of a member, are permitted to enter said premises.

2.04 Annual License Fee - The annual fee for a license issued under the provisions of Chapter 60, Article 7 shall be as follows:

(1) For a fraternal or veterans' organization or a non-profit social club Seven Hundred Fifty Dollars (\$750.00).

(2) For a ~~private club other than a private club~~ of the type specified in subsection (a) of this section, One Thousand Dollars (\$1,000.00) if such private club has less than one thousand members. Two Thousand Five Hundred Dollars (\$2,500.00) if such private club has one thousand or more members.

The fee for any license issued following the first day of January of any year, to expire on the 30th day of June of such year, shall be one-half (1/2) of that previously prescribed. Such fee shall be payable to the West Virginia Alcohol Beverage Control Commissioner by certified check, cashier's check or money order and must accompany the application.

2.05 Bond - No license shall be issued until the applicant therefore has executed a bond in the penal sums of Five Thousand (\$5,000.00), payable to the State of West Virginia. The surety on said bond shall be executed by a corporate surety authorized to transact business in the State of West Virginia, which bond shall be conditioned on the payment of all fees prescribed by law and on the faithful performance of, and compliance

with, the provisions of Chapter 60, Article 7 of the West Virginia Code of 1931, as amended, and these regulations duly promulgated thereunder, and the same shall be done on Alcohol Beverage Control Commissioner Form No. 193.

2.06 License not Transferable - A license issued under the provision of these rules and regulations shall be valid only for the organization named thereon to conduct a private club on the premises thereon described, and is not transferable. If there is a change in ownership, such new owners must make application as prescribed, then such violation shall constitute grounds for revocation of such license that they are then operating under.

2.07 License application Form - The application for license to sell alcoholic liquors by private clubs ABCC Form No. 192 shall be in the form set forth below *is available from the WV ABCC office.*

Leave out from here

APPLICATION FOR
LICENSE TO OPERATE A PRIVATE CLUB
TO THE WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

The undersigned association or corporation hereby applies for a PRIVATE CLUB LICENSE.

1. Name of Club _____
2. Street Address of Club _____
3. Municipality _____
4. Post Office address _____

(name of Post Office) (Rural Route) or (P.O. Box NO.)

5. The Name of the Manager or Steward is _____
Date of Birth _____ Business Phone _____ Home Phone _____
Home Address _____ How long a resident of W. Va. _____

6. PREMISES TO BE LICENSED

(a) List complete information including photographs for every room which is to be used in the operation of the licensed business, including a separate kitchen if any, and area to be used for storage of alcoholic beverages.

Room Width	Length	Located on What Floor	Seating Capacity	Location Serving, Kitchen or storage

(b) List complete information in the form of a diagram giving dimensions for every room under control or lease of the licensee that is contiguous and in addition to the area specified in (a).

7. Owner of Club Property _____ Expiration Date of Lease _____

8. Address of Property Owner _____

9. (a) No clause appears in the deed to the property prohibiting the sale of Liquor or Malt or Brewed Beverages, except as follows:

(b) Deed is recorded in Volume _____ Page _____

10. The license applied for is not for any college fraternity or sorority nor for any club located on any college campus, state university

campus or branch thereof and the club has not been determined by law to be a public nuisance, except as follows:

11. The primary purpose or purposes of the club is _____

12. Club organized _____ (Date) Incorporated _____ (Date) _____ (place)

13. Has the club previously filed an application for license? _____

Has the license ever been revoked? _____ If so, when and where _____

13a. Name and address of national recognized fraternal or veterans organization with which affiliated, if any _____

Nature of Affiliation _____

Date of Affiliation _____

14. Number of Members of Applicant _____

15. West Virginia Consumer Sales Tax Account Identification Number _____

16. Business Franchise Number _____

17. Health Department Permit Number _____

18. NUMBER OF EMPLOYEES _____

19. (2) Type of License applies for (I or II) _____

(b) Are you the holder of a Retail Liquor Dealer Special Tax Stamp

(Yes or No) _____

Series II

20. Arrest Record--The following is a record of all arrests of the Officers, Directors, and Manager or Steward and Employees. (All Applications will be checks through the Criminal Identification Bureau of the Department of Public Safety).

(Attach rider if necessary)

If there have been no arrests insert the word "None".

Name	Date of Arrest	Charge	Disposition of Arrest	Location of Court County or State

21. The undersigned agree, if a license is issued as herein applied for, to comply at all times and observe all the provisions of Chapter 60, Article 7 of the Code of West Virginia 1931, as amended and all other laws of this State and the rules and regulations promulgated by the Alcohol Beverage Control Commissioner, the undersigned further certify that if a license is issued the general public will not be admitted on the premises set forth in this application and only duly elected or approved dues paying members, in good standing, and their guests, while in the company of a member, will be permitted to enter said premises.

IF AN ASSOCIATION, USE THE FOLLOWING:

The undersigned hereby verify that we are all of the members of the governing board of the applicant and that the statements and answers made in the foregoing application are true and the said writing is the act and deed of said association.

NAME WRITTEN SIGNATURE REQUIRED)	TITLE	HOME ADDRESS	HOW LONG A RESIDENT OF WEST VIRGINIA	DATE OF OF BIRTH
--	-------	--------------	--	---------------------

State of West Virginia, _____ County, To-Wit:

_____, Being first duly sworn, according
to law, deposes and says that he is the duly elected and qualified _____

(President)

_____ of the _____,
Vice-President or Recording Secretary

an association duly organized for the purpose and purposes herein stated,
and that the statements and answers made in the foregoing application are
true and acknowledged the said writing to the act and deed of said associat-
ion.

Attested _____
Secretary

Sworn to before me and subscribed in my presence this _____ day of _____
_____, 19_____.

Notary Public

My Commission Expires _____.

IF A CORPORATION, USE THE FOLLOWING:

The undersigned hereby verify that we are all of the officers and all of the members of the board of directors of the applicant and that the statements and answers made in the foregoing application are true and the said writing is the act and deed of said corporation.

NAME WRITTEN SIGNATURE REQUIRED	TITLE	HOME ADDRESS	HOW LONG A RESIDENT OF WEST VIRGINIA	DATE OF OF BIRTH
	President			
	Vice-Pres.			
	Secretary			
	Director			
	Director			

State of West Virginia, _____ County, To-Wit:

_____, Being first duly

sworn, according to law, deposes and says that he is _____
President

Vice-President, Secretary

of the _____, a corporation duly

organized and authorized by law to do business in the State of West

Virginia, and that the statements and answers made in the foregoing

application are true and acknowledged the said writing to be the act and

deed of said corporation.

(Signed) _____

Attested; _____

Corporation Seal

Sworn to before me and subscribed in my presence this _____ day of
_____, 19_____.

Notary Public

My Commission Expires _____.

INSTRUCTIONS

1. All questions must be answered or the application will be returned.
All attached riders must be identified with the name and address of the applicant.
2. All applications shall have attached thereto a copy of the corporate charter and if an association the agreement of the association. If renewal, no charter is necessary.
3. An original and one copy of the application must be sent to the Alcohol Beverage Control Commissioner.
4. Each member of the governing board of the applicant must verify the application for an association and each officer and all members of the board of directors must verify the application for a corporation.

DO NOT WRITE BELOW THIS LINE

Action of the Deputy Commissioner:

_____ Approved _____ Disapproved _____ Date

Deputy Commissioner

Action of the Chairman of the Advisory Board:

_____ Approved _____ Disapproved _____
Date

Chairman of the Advisory Board

Action of the Commissioner:

_____ Issued _____
Date Type License Number

_____ Denied _____
Date West Virginia Alcohol Beverage Control
Commissioner

ABCC FORM NO. 192

2.08 Bond Form - The Alcohol Beverage Control Bond

ABCC Form No. 193 shall be in the form set forth below:

ALCOHOL BEVERAGE CONTROL BOND

This Bond May Be Used By An Association Or Corporation

KNOW ALL MEN BY THESE PRESENTS:

THAT WE _____

_____ of _____ County, West Virginia _____
Association

_____ doing business under the firm name
Corporation

of _____

as principal, and _____, a corporation

authorized to do business in the State of West Virginia, as surety, are

held and firmly bound unto the STATE OF WEST VIRGINIA in the full and just

sum of FIVE THOUSAND (\$5,000.00), to the payment whereof well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION of the above obligation is such that whereas the above bound principal is about to obtain in pursuance of the provisions of Article 7, Chapter 60 of the Code of West Virginia, of 1931, as amended and regulations promulgated thereunder by the Commissioner, a LICENSE TO OPERATE A PRIVATE CLUB on the premises described in the application for such license.

NOW, THEREFORE, if the said principal shall faithfully observe the laws of the State of West Virginia, and regulations promulgated thereunder by the Commissioner, with the respect to the distribution, sale and distribution, sale and dispensing of alcoholic liquors, and the operation of a private club, then this obligation to be void; otherwise to remain in full force and effect, and if the license of said principal shall be revoked, then the full amount of this bond shall be forfeited to the State of West Virginia and said amount when received by the state shall be credited to the state fund, general revenue.

This bond is executed in pursuance of the provisions of said Article 7, Chapter 60 of the Code of West Virginia, of 1931, as amended and regulations promulgated thereunder by the Commissioner, and the pertinent provisions of said article and regulations are hereby made a part of this bond.

IN WITNESS WHEREOF THE said principal has hereunto set his hand and affixed his seal, and the said surety has caused its corporate name to be signed hereto and its corporate seal to be hereunto affixed by its official or agent thereunto duly authorized, and this bond is dated as of the _____ day of _____, 19_____.

ASSOCIATION APPLICANTS EXECUTE BELOW

PRINCIPAL _____ (SEAL)

_____ (SEAL)

SURETY _____

SURETY
CORPORATE SEAL

CORPORATION APPLICANTS EXECUTE BELOW

IN WITNESS WHEREOF the said principal and the said surety have caused their respective corporate names to be signed hereto and their respective corporate seals to be hereunto affixed by their respective officials or agents thereunto duly authorized, and this bond is dated as of the _____ day of _____, 19_____.

PRINCIPAL
CORPORATE SEAL

PRINCIPAL _____

BY: _____

SURETY
CORPORATE SEAL

SURETY _____

BY: _____

ASSOCIATION ACKNOWLEDGEMENT

STATE OF WEST VIRGINIA,

COUNTY OF _____ To-Wit:

I, _____, a Notary Public in and for the
County and State aforesaid, do hereby certify that _____
_____, who signed the writing above, or hereto,
annexed, for _____ an association, bearing date
on the _____ day of _____, 19_____, has
this day in my said county, before me acknowledged the said writing to be
the act and deed of said association.

Given under my hand this _____ day of _____ 19_____.

Notary Public

My Commission expires on the _____ day of _____, 19_____.

STATE OF WEST VIRGINIA,

COUNTY OF _____ To-Wit:

I, _____, a Notary Public in and for the
County and State aforesaid, do hereby certified that _____
_____, who signed the writing above, or hereto annexed
for _____, a corporation, bearing date on the
_____ day of _____, 19_____, has this day in
my said county, before me, acknowledged the said writing to be the act and

and deed of said corporation.

Given under my hand this _____ day of _____ 19_____.

Notary Public

BONDING COMPANY-CORPORATE ACKNOWLEDGMENT

STATE OF WEST VIRGINIA

COUNTY OF _____ TO-Wit:

I, _____, A Notary Public in and for
the County and State aforesaid, do hereby certify that _____
_____, who signed the writing above, or
hereto annexed for _____ a corporation,
bearing date on the _____ day of _____ 19_____,
has this day in my said county, before me, acknowledged the said writing
to be the act and deed of said corporation.

Given under my hand this _____ day _____ 19_____.

Notary Public

My Commission expires on the _____ day of _____, 19_____.

2.09 License Form - The license to sell alcoholic liquors by

Private Clubs ABCC Form No. 195 shall be in the form set forth below:

STATE OF WEST VIRGINIA

Office of West Virginia Alcohol Beverage Control Commissioner, ss:

This is to certify that the undersigned, in pursuance of the authority vested in the Commissioner by Chapter 60, Article 7 West Virginia Code of 1931, as amended, has this day granted in the name and for the place of business set out below this class_____.

LICENSE TO SELL ALCOHOLIC LIQUORS BY A PRIVATE CLUB

Given under my hand this, the _____
day of _____, _____

COMMISSIONER

NOTICE: This license is issued to the club and is not assignable or transferable.

Post this license in a conspicuous place at location for which issued ABCC- 195.

SECTION 3. OPERATION OF PRIVATE CLUB

3.01 Sale to Members and Guests - No licensee is authorized to sell alcoholic liquor for consumption on the premises of said licensee except to its members and their guests, while in the company of a member and said alcoholic liquors must have been purchased from the West Virginia Alcohol Beverage Control Commissioner.

3.02 Age for Purchase of Alcoholic Beverages - No licensee shall sell any alcoholic beverage to individuals below the age of eighteen (18) years. Before selling to any individual between the age of eighteen (18) and twenty-one (21) years, the licensee shall require proof of age by way of an Alcohol Beverage Control Commission Certificate of Age or require at least three (3) documents certifying the age of the individual, one of which shall be a valid birth certificate, or copy thereof, showing that the holder is at least eighteen (18) years of age. The following are considered to be valid proofs of age.

(1) A valid State Driver's License showing that the holder is at least eighteen (18) years of age.

(2) A selective service card showing that the holder is at least (18) eighteen years of age.

(3) A voter's Registration Card showing that the holder is at least eighteen (18) years of age.

(4) Any other valid means of proving that the individual is at least eighteen (18) years of age.

The failure to produce satisfactory proof of age upon demand shall entitle the licensee to refuse to sell alcoholic beverages to the individual attempting to purchase the same.

3.03 Membership List - A current membership list containing the names and addresses of the members of any private club licensed hereafter shall at all times be kept by said licensee and be open for inspection by the Commissioner at the place of business of said licensee at all reasonable times hereafter. Misplacement of such list shall not constitute a sufficient basis for the nonproduction of such list upon the request for inspection.

There shall also be maintained a valid, correct guest book showing the names and addresses of all guests on the licensed premises.

3.04 Membership Card - Every private club licensed hereunder shall give to each member thereof a membership card readily identifiable as such containing the name and address of such member.

3.05 Age of Manager - No licensee whose manager is under the age of eighteen (18) years shall be eligible for license.

3.06 Inspection - The licensee shall at reasonable times permit the immediate inspection of the licensed premises by the Commissioner, his employees and agents, in order to insure that the laws of the State and these regulations are enforced. Upon the presentation of credentials the licensee shall forthwith allow the Commissioner, his employees and agents, immediate ingress to the licensed premises, and

there shall be no occasion for delay in the conduction of such inspection. No licensee shall personally or by an agent or employee hinder or interfere with an inspection of the licensed premises nor shall any licensee allow patrons or others to hinder or interfere with such inspection.

Any evidence of a violation found during an inspection shall be seized and impounded and the same shall be admissible into evidence to prove such violation.

3.07 Door Marker and Posting License - Each licensee shall have on his main entrance to its private club facility in letters no higher than six (6) inches, a statement "ABCC License No. _____." The license granted under Chapter 60, Article 7 of the West Virginia Code of 1931, as amended, and these regulations promulgated thereunder, must be kept posted in a conspicuous place in the club premises.

3.08 Licensee's Purchases of Alcoholic Liquors - After the granting of a private club license, each holder thereof shall purchase alcoholic liquors for resale from an Alcohol Beverage Control Store, and shall, at the time of purchase give to the cashier, its West Virginia Consumer Sales Tax Exemption Certificate Number.

3.09 Hours for Sale of Alcoholic Beverages - No licensee shall sell, give or dispense alcoholic beverages, or permit the consumption thereof, on any licensed premises or in any rooms directly connected therewith between the hours of 3:00 o'clock a.m. and 1:00 o'clock p.m. on any Sunday; nor shall any licensee sell, give or dispense alcoholic

beverages, or permit the consumption thereof, on any licensed premises or in any rooms directly connected therewith, between the hours of 3:30 o'clock a.m. and 7:00 o'clock a.m. on any weekday.

3.10 Hours of Operation - The licensed premises of all private clubs shall be closed for operation and cleared of all persons, including employees, thirty (30) minutes after the hours for sale of alcoholic beverages, as specified in Regulation 3.09, have expired, nor shall such licensed premises be occupied by persons any sooner than one-half ($\frac{1}{2}$) hour prior to the hours for sale of alcoholic beverages. Provided, however, that the licensed premise may be open for food sales at 9:00 o'clock a.m. on any Sunday.

3.11 Cessation of Entertainment - All entertainment, both live and mechanical, the latter to include juke boxes, shall cease and abate on the licensed premises one-half ($\frac{1}{2}$) hour prior to the expiration of the hours for sale of alcoholic beverages, such hours being specified in Regulation 3.09.

3.12 Entranceways - During the hours for sale of alcoholic beverages all doors to and from the licensed premises shall be closed except for the ingress and egress of the members and their guests.

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3.13 Suitability of kitchen and dining facilities -

(a) Prior to the issuance of a private club license, all kitchen and dining facilities are to be checked by agents or employees of the Commissioner for their suitability in serving food to their members and their guests. Equipment in such kitchen shall be capable of preparing a freshly cooked meal on the licensed premises. In addition, licensees shall have at least enough food to serve one-fourth ($\frac{1}{4}$) the number of seats in such private club at any one time.

(b) A suitable kitchen shall contain equipment as follows:

(1) One range with oven and no fewer than two burners, or a microwave oven which has a variable control and a separate range with two burners;

(2) One sink with hot and cold running water;

(3) One cold storage unit or refrigerator at least seventeen (17.0) cubic feet in size; and

(4) Cooking utensils and pots and pans sufficient for preparation of the required meals.

(c) A suitable dining facility shall include the following: Plates (other than of paper or similar construction), metal knives, forks and spoons, drinking glasses and cups, in sufficient quantities to serve no fewer meals than one-fourth ($\frac{1}{4}$) the number of seats in the club.

(d) A meal may consist of one item or any combination of items. For example, fresh, canned or packaged chili, soup, spaghetti, fresh salad, fresh or prepackaged sandwiches, freshly prepared meats and vegetables, and TV Dinners will be acceptable.

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Examples of items which, by themselves, do not qualify as adequate are such items as: packaged potato chips and similar products; packaged crackers; packaged nuts; packaged desserts (fruit pies, cakes, cookies, etc.); and bar sausages and similar products. The key word in the definition of meals is preparation.

(e) Meals shall be available from opening of the club until closing. Limited menus will be acceptable after 10:00 p.m. For example, cold sandwiches which can be made in advance and refrigerated for use after 10:00 p.m. is one example of an acceptable limited menu.

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3.14 Age for Membership - No licensee shall admit to membership any individual below the age of eighteen (18) years, and no individual below the age of eighteen (18) years shall be permitted on the licensed premises of a licensee as a guest unless accompanied by parent or legal guardian.

3.15 Lighting of Licensed Premises - The interior of all licensed premises shall be adequately lighted at all times while the licensee is conducting business or has employees on such premises.

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3.16 Purchase of Alcoholic Beverages - Insofar as purchases are concerned by a duly licensed private club money orders, certified checks, cashier's checks and traveler's checks are to be treated as cash and may be accepted in payment of a purchase from a State Store or Agency. In addition thereto a personal check from a duly licensed private club will be treated as cash if a guaranty bond issued from a bonding company licensed to do business in West Virginia is posted in advance with the Commissioner in a sum sufficient to bond the total amount of such purchase or purchases: provided that such purchase or purchases shall not exceed the total of the bond and in this regard purchases insofar as the bond is concerned shall be treated as cumulative until such time as the check or checks shall clear and be honored by the bank upon which such check is drawn. Further, a duly licensed private club may, in addition to method provided above, purchase by personal check if there is posted in advance with the Commissioner, a line of credit issued by a duly organized national or state banking institution: provided that such purchase or purchases shall not exceed the total of

the posted line of credit and in this regard purchases insofar as the line of credit is concerned shall be treated as cumulative until such time as the check or checks shall clear and be honored by the making bank or the bank upon which the check or checks are drawn. Applications for the purpose of purchasing by personal check when guaranteed by a guaranty bond or line of credit shall be obtainable from the Commissioner at his office in Charleston, West Virginia. In the event that any check is returned for insufficient funds then, and in that event, the Commissioner shall notify the bonding company or bank issuing the line of credit and shall forthwith make demand for payment, and in addition thereto they shall be charged a handling fee of \$5.00, such sum to be charged in addition to the amount shown due on the face of the subject check or checks.

SECTION 4. VIOLATIONS

4.01 Prohibited Acts - (a) No licensee nor any agent, employee or member thereof, shall, on such licensee's premise:

(1) Sell, or offer for sale, any alcoholic liquors or alcoholic beverages other than from the original package or container.

(2) Authorize or permit any disturbance of the peace, obscene, lewd, immoral or improper entertainment, conduct or practice.

(3) Sell, give away, or permit the sale of, gift to, or the procurement of any alcoholic liquors, for any person under the age of eighteen (18) years, any mental incompetent, or person who is visibly physically incapacitated due to the consumption of alcoholic liquor, or the use of any Controlled Substance as specified in Chapter 60-A of the West Virginia Code of 1931, as amended.

(4) Permit the consumption by, or serve to, on the licensed premises, any alcoholic liquors, to any person under the age of eighteen (18) years.

(5) With the intent to defraud, alter, change or mis-

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A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 4/7/83
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represent the quality, quantity or brand name of any alcoholic liquor.

(b) No licensee nor any agent, employee or member thereof, shall, outside of the licensee's premises, advertise in any news media or other means, the fact that alcoholic liquors or alcoholic beverages may be purchased thereat.

(c) No licensee, nor any agent, servant or employee of said licensee, may at any time violate any of the foregoing provisions, and any violation by said licensee, agent, servant or employee shall be grounds for revocation or suspension of its private club license.

(d) Any holder of a private club license who has its license suspended shall cease and desist from any and all operation as a private club during the period of suspension.

4.02 Public Nuisance - If it is determined by law that any club which is licensed pursuant to Chapter 60, Article 7 of the West Virginia Code of 1931, as amended, and these regulations, shall constitute a public nuisance to any church, school, hospital, public institution or otherwise, then such license shall be revoked or suspended, the same being at the sound discretion of the Commissioner, until such nuisance is abated.

Section 5. HEARING AND APPEAL PROCEDURE

5.01 Order Refusing License, Suspending or Revoking Same -

If the Alcohol Beverage Control Commission refuses to issue a license or suspends or revokes a license, he shall make and enter an order to that effect and mail by certified mail, return receipt requested, a copy of said order to the licensee, or serve the same as provided for the service of legal process in accordance with the West Virginia Rules of Civil Procedure.

5.02 Petition for Hearing - Any applicant or licensee, as the case may be, adversely affected by such order, shall have the right to a hearing thereon before the Commissioner or a person designated by him as hearing examiner, provided that a petition in writing for such a hearing is served upon the Commissioner within ten (10) days following the receipt by such applicant or licensee of said copy of said order.

5.03 Petition Requirements - The petition for a hearing is to be in writing with an original and one (1) copy. It shall be complete in itself so as to fully state the issues. No telegram, telephone call, letter, or similar communication will be regarded as a petition. The petition must contain the following:

(1) A clear and concise assignment of each error which the petitioner alleges to have been committed by the Commissioner in the determination of a violation, with each assignment of error being shown in separately numbered paragraphs.

(2) A clear and concise statement of fact upon which the petitioner relies as sustaining its assignment of error.

(3) A prayer setting forth the relief sought.

(4) The signature of the petitioner or its officers signing such petition.

(5) A verification by the petitioner.

5.04 Form for Petition - A petition for hearing shall be in the form set forth below:

PETITION FOR HEARING

To: West Virginia Alcohol Beverage
Control Commissioner
2019 Washington Street, East
Charleston, West Virginia

(For Commission Use Only)

Docket NO. _____

Date of Order of Suspension
or Revocation _____

Whether Suspension or
Revocation _____

In The Matter of:

Petitioner's Business Name _____

Petitioner's ABCC License No. _____

Address _____

The above named against whom you have issued an order of (Revocation or Suspension), and, in support of such petition avers as follows;

First: Your Petitioner admits as true and correct all of the determinations made by your Commissioner and set forth in the above order.

and basis thereof, except the following: (Specify here each error which the petitioner alleges to have been made by the Commissioner).

Second: (Set forth clear and concise statements of fact upon which the petitioner relies as sustaining the assignment of error).

Wherefore, your Petitioner prays (insert relief sought, i.e., this order be set aside).

State of _____) Business Name _____
)SS Signature of Affiant _____
County of _____) Title _____

_____, being duly sworn according to law, deposes and says that the facts alleged in this petition, including my sheets attached hereto, are true and affiant is the Petitioner or is duly authorized to represent the Petitioner.

BY _____

Sworn to and subscribed before me this _____ day of _____ 19____. at _____

My commission expires _____, 19____. Notary Public

5.05 Hearings - Cost Deposit - The person demanding a hearing shall give security for the cost of said hearing in the amount of Three Hundred Dollars (\$300.00) and said cost deposit shall be advanced by certified check, cashier's check, or money order and shall accompany the petition demanding a hearing.

5.06 Subpoenas and Subpoenas Duces Tecum - In all hearings held under Chapter 60, Article 7 of the West Virginia Code of 1931, as amended, and these duly promulgated regulations, the evidence of witnesses and the production of documentary evidence may be required through the use of subpoenas and subpoenas duces tecum. Such subpoenas or subpoenas duces tecum may be issued at the request of the Alcohol Beverage Control Commissioner or by the licensee, the same to be issued by either the Commissioner or his duly appointed hearing examiner.

Every such subpoena and/or subpoena duces tecum shall be served at least five (5) days before the return date thereof, either by personal services made by any person eighteen (18) years of age, or older or by registered or certified mail, but a return acknowledgment signed by the person to whom the subpoena or subpoena duces tecum is directed shall be required to prove service by registered or certified mail.

All subpoenas and subpoenas duces tecum will be issued in the name of the Alcohol Beverage Control Commission, but any party requesting their issuance must see that they are properly served. Service of subpoenas and subpoenas duces tecum issued

at the insistence of the Alcohol Beverage Control Commission are to be the responsibility of such Commission. Any person who serves any such subpoena or subpoena duces tecum is entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this State, and fees for the attendants and travel of witnesses shall be the same as for witnesses before the circuit courts of this State.

All such fees shall be paid by the Alcohol Beverage Control Commission if the subpoena or subpoena duces tecum is issued, without the request of an interested party, at the insistence of the Commission.

All such fees related to any subpoenas or subpoena duces tecum issued at the insistence of a licensee shall be paid by the licensee who asks that such subpoena or subpoena duces tecum be issued, out of the hearing deposit.

All requests by licensees or the Commission for subpoena and subpoena duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay such fees.

Any person receiving a subpoena or subpoena duces tecum issued hereunder shall honor the same as though it was issued by a circuit court of the State, and shall appear as a witness and /or produce such books, records or papers in response to such subpoena or subpoena duces tecum. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person or the refusal of any witness to testify to any matter regarding which he or she may

be lawfully interrogated, the circuit court of the county in which the hearing is being held or the judge thereof in vacation, upon application by the Commission, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein.

5.07 Stay of Suspension or Revocation Order - The service of a petition for hearing upon the Commissioner shall operate, other than herein provided, to suspend the execution of any revocation or suspension of a private club license with respect to which a hearing is being demanded except, (1) an order suspending a license for failure of said license to keep the bond, required by Chapter 60, Article 7, Section 4 of the West Virginia Code of 1931, as amended in full force and effect, and (2) a suspension or revocation order issued pursuant to Regulation No. 4.02.

5.08 Hearing Date - The Commissioner shall set a date for any hearing demanded and notify the person demanding such hearing the date and time of said hearing, which said hearing shall be held within thirty (30) days after receipt of said demand.

5.09 Place of Hearing - Hearings will be held in Charleston, West Virginia, unless the Commissioner determines otherwise.

5.10 Continuances - Hearings will not be delayed by a motion for continuance, unless it is timely made and sets forth good and sufficient cause. Conflicting engagements of counsel or the employment of

new counsel will never be regarded as good ground for a continuance, unless set forth in a motion filed promptly after the notice of hearing has been mailed, or unless extenuating circumstances are shown which the Commissioner deems adequate.

5.11 Absence of Petitioner, Counsel or His Representative -

The absence of the petitioner, his legal counsel, or his representative at a hearing, after service of notice of time, place and date, shall not be the occasion for delay or continuance. The hearing shall proceed and the case be regarded as having been submitted for decision on the part of the absent petitioner or petitioners.

5.12 Hearing - The Alcohol Beverage Control Commissioner

may designate an examiner to conduct the hearing, and when the term "Commissioner" is used in these regulations relating to the conduct of the hearing and the issuance of subpoenas and subpoenas duces tecum it shall likewise mean hearing examiner.

The petitioner may appear individually, or by legal counsel, or by duly authorized representative. In the absence of the petitioner, written evidence of a representative's or agent's authority must be presented to the satisfaction of the Commissioner.

The Petitioner, his duly authorized representative or agent, may with the approval of the Commissioner, waive the right to a hearing and agree to submit the case for decision upon the petition and record, with

or without a written brief. Such waivers and agreements are to be in writing or upon the record.

5.13 Argument and Briefs - Petitioners will be given an opportunity for argument within time limits fixed by the Commissioner following submission of evidence. The Commissioner will accept briefs in lieu of argument. Briefs must be filed within ten (10) days after the hearing.

5.14 Evidence Admissible at Hearing - The Commissioner may admit any relevant evidence, except that he shall observe the rules of privilege recognized by law relating to communications and topics. A finding is to be supported by the kind of evidence commonly relied upon by reasonably prudent men in the conduct of their affairs, whether or not the evidence would be admissible before a jury. The Commissioner may exclude any evidence which is irrelevant, unduly repetitious, or lacking in substantial probative effect.

5.15 Record of Proceedings - There shall be a record made at all hearings held pursuant to Chapter 60, Article 7 of the West Virginia Code of 1931, as amended, and these duly promulgated regulations. For the purpose of these regulations, "record" shall mean any manner of recording from which a transcript can be made.

5.16 Commissioner's Decision - After the conclusion of the hearing the person designated by the Commissioner as hearing examiner shall prepare a recommended decision supported by findings of fact and

conclusions of law affirming, modifying or vacating the earlier order of the Commissioner with respect to which said hearing was held, and the Commissioner may, thereafter, either accept or reject such recommended decision, and if he shall accept such decision, he shall sign and acknowledge the same as his own after having reviewed the transcript and all exhibits attached and affixed thereto, and if he shall reject the same, he shall prepare a decision setting forth his own findings of fact and conclusions of law. In either event, the order signed by the Commissioner shall be final unless vacated or modified upon judicial review thereof. A copy of said order shall be served upon each party to the hearing and their attorney of record, if any, in person or by registered or certified mail.

5.17 Appeal to Circuit Court - An appeal may be taken by the applicant or licensee to the Circuit Court of Kanawha County, West Virginia or the circuit court of the county in which the petitioner resides or does business, or with the judge thereof in vacation, if filed within thirty (30) days after the charge upon which said party received notice of the final order of the Alcohol Beverage Control Commissioner.

5.18 Supreme Court of Appeals - An appeal may be taken by the applicant or licensee, or by the Alcohol Beverage Control Commissioner from the final judgment of the circuit court to which the applicant or licensee has appealed, the same to be taken in the manner and within the time provided by law for civil appeals generally.

6.01 Severability - The sections and subsections of these

regulations shall be deemed severable. Should any section or subsection be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of the State of West Virginia, then such opinion or enactment shall invalidate only that particular section or subsection of these regulations and all other sections shall remain in full force and effect, provided such remaining portions are not determined to be inseparable, and to this end these regulations are declared separable.