

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

FILED
AUG 6 2 21 PM '99

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Alcohol Beverage Control Administration TITLE NUMBER: 175

CITE AUTHORITY §60-7-10, 29A-3-1 et.seq.

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Private Club Licensing

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Robin C. Capehart
Secretary

\$6.80

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 6, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Alcohol Beverage Control Administration

Division of West Virginia Tax & Revenue

322 70th Street, SE. Charleston, WV 25304 Tel: 304-558-2481

LEGISLATIVE RULE TITLE: 175-2 et.seq.

Private Club Licensing

1. Authorizing statute(s) citation §29A-3-1, et.seq. §60-7-10

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

July 7, 1999

b. What other notice, including advertising, did you give of the hearing?

Class II Legal Advertisement in Charleston Gazette and Charleston Daily Mail. Copy of publication affidavit is attached.

c. Date of Public Hearing(s) or Public Comment Period ended:

August 6, 1999, 9 AM

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received XX

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 7, 1999

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Betty Peters White 304-558-0800 Fax

Alcohol Beverage Control Administration

322 70th Street, SE, Charleston, WV 25304

Telephone: 304-558-2481 e-mail: bwhite@abcc.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A _____

d. Attach findings and determinations and reasons:

Attached _____ N/A _____



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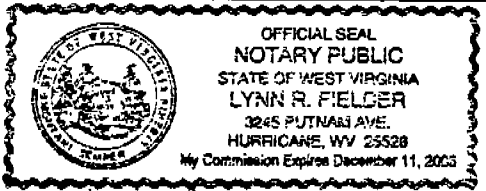
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WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION
 The proposed legislative rules for Title 175, Series (Retail License Operations); Title 175, Series 2 (Private Club Licensing) and Title 175 Series 4 (Retail sale of Wine in Grocery Stores, Wine Specialty Shops and Private Wine Restaurants), were filed with the Secretary of State's Office on July 7, 1999. These rules will update that went into effect in 1991. The proposed rules will implement certain changes contained in Enrolled House Bill 3023, 1999, Regular Session, and other statutory changes. The Secretary of State may assess a copying charge for these documents.
 Written comments on these rules must be received prior to 9 a.m. on August 6, 1999, and should be directed to Betty Peters White, West Virginia Alcohol Beverage Control Administration, 322 - 70th Street, S.E., Charleston, WV 25304. (440811)

State of West Virginia, Senara Legg of THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER, THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER, published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of REVISED RULES, REG was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County, West Virginia, on the 21ST day of JULY 1999. Published during the following dates: 07/20/99, 07/21/99
 Subscribed and sworn to before me this 23 day of July
 Printers fee \$ 71.36



Lynn R. Fielder
 Notary Public of Kanawha County, West Virginia



**STATE OF WEST VIRGINIA
ALCOHOL BEVERAGE CONTROL ADMINISTRATION**

322 70th Street, SE
Charleston, West Virginia 25304-2900

CECIL H. UNDERWOOD
GOVERNOR

DONALD L. STEMPLE
COMMISSIONER

ROBIN CAPEHART
SECRETARY OF TAX & REVENUE

August 6, 1999

Honorable Ken Hechler
Secretary of State
West Virginia State Capitol
Main Office Complex, Building 1
Charleston, WV 25305

Re: Title 175, Series 1., 2., and 4 Proposed Agency Rules

Dear Mr. Secretary:

Pursuant to the Notice of Filing of Proposed Agency Rules, specifically for Series 1., 2., and 4. of Title 175, please be advised that this agency received no comments.

Sincerely,


Betty Peters White

bp

MEMO

To: Donald L. Stemple, Commissioner
From: Jane Charnock
Subject: Series 2 revisions
Date: June 9, 1999

Attached hereunto is the final revision on Series 2, Title 175, of the agency's regulations relating to Private Club Licensing.

Changes are indicated by strikethroughs and underlining, with strikethroughs being the language removed from existing regulations and underlining being new language.

Major changes are as follows:

Page 2: Reference is made to limited liability companies.

Throughout: Ages are changed from 18 to 21.

Throughout: ABCC is changed to ABCA.

Page 10: A provision for Commissioner-approved deliveries to clubs from retail stores is included, consistent with this year's legislation.

Page 14: The requirement of holding a hearing within 30 days of a demand for revocation hearing is eliminated.

There was some talk in my discussions with agency staff about eliminated the awkward membership requirements and club designations contained throughout the regulations. It was a consensus among the licensing staff that the club designations are artificial and meaningless and a request was made to eliminate the same. I declined to do so, because the statute guiding this agency and which is the basis of these regulations still includes this language.

Additionally, there was a request to include a prohibition against having hot tubs or other fixtures in strip clubs. I declined to include this in these proposed regulations for the reason that the county health departments can easily address this health concern.

6-10-99

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TITLE 175
LEGISLATIVE REGULATIONS
ALCOHOL BEVERAGE CONTROL ADMINISTRATION ~~COMMISSIONER~~

SERIES 2
PRIVATE CLUB LICENSING

OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

§175-2-1. General.

1.1. Scope. - This modified proposed legislative regulation amend 175 C.S.R. 2 which regulates the licensing of private clubs by establishing reasons the Alcohol Beverage Control Administration Commissioner may use in refusing to grant a license for a private club.

1.2. Authority. -- W. Va. Code §29A-3-1 et seq. and §60-7-10.

1.3. Filing Date. -- ~~April 15, 1991~~

1.4. Effective Date. -- ~~April 15, 1991~~

§175-2-2. Definitions.

As used in these regulations and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein, and shall apply in the singular and in the plural.

2.1. "Alcoholic liquor" means alcohol, beer, wine and distilled spirits, and any liquid or solid capable of being used as a beverage, but shall not include wine with an alcohol content of fourteen percent (14%) or less by volume, nonintoxicating beer or nonintoxicating beverages.

2.2. "Applicant" means a private club applying for a license under the provisions of West Virginia Code article 60-7.

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

2.4. "Code" means the official Code of West Virginia, one thousand nine hundred thirty-one, as amended.

2.5. "Alcohol Beverage Control Administration Commissioner." or ~~ABCC~~ "ABCA" means the West Virginia Alcohol Beverage Control Administration Commissioner (Administrator) or his or her delegate.

2.6. "Distilled spirits" means ethyl alcohol, ethanol or spirits, or wine, including all dilutions and mixtures thereof, from whatever source or by whatever process produced, for beverage use, and shall include, but not be limited to, natural spirits, whiskey, brandy, rum gin, vodka, cordials and liqueurs. Any alcoholic beverage containing more than 24% of alcohol by volume shall be deemed to be distilled spirits.

2.7. "Fortified wine" means any wine to which brandy or other alcohol has been added and includes dessert wines which are not fortified and any wine containing greater than fourteen percent (14%) alcohol by volume.

2.8. "Intoxicated" means having one's faculties impaired by alcohol or other drugs to the point where physical or mental control or both are markedly diminished.

2.9. "Nonintoxicating beer" means any beverage, obtained by the fermentation of barley, malt, hops, or similar products or substitute and containing at least one-half of one percent (.5%) alcohol by volume, but not more than four and two-tenths percent (4.2%) of alcohol by weight, or six percent (6%) by volume, whichever is greater.

2.10. "Liquor Control Act" means Chapter 60 of the Code.

2.11. "Market zone" means the geographical area designated as such by the Retail Liquor Licensing Board for the purpose of issuing retail liquor licenses.

2.12. "Person" shall mean an individual, firm, partnership, limited partnership, corporation, limited liability corporation or voluntary association.

2.13. "Public place" means any place, building or conveyance to which the public has, or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies, and corridors of hotels and any highway, street, lane, park or place of public resort or amusement: Provided, That the term "public place" shall not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of West Virginia Code Chapter 60 to sell alcoholic liquors for consumption on the premises.

2.14. "Private club" means any corporation, limited liability corporation or unincorporated association which either:

2.14.1. belongs to or is affiliated with a nationally recognized fraternal or veterans organization, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises, to which club are admitted only duly elected or approved dues paying members in good standing of such corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in said building or on said premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests; or

2.14.2. is a nonprofit social club, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises, to which club are admitted only duly elected or approved dues paying members in good standing of such corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in said building or on said premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests; or

2.14.3. is organized and operated for legitimate purposes, which has at least one hundred (100) duly elected or approved dues paying members in good standing, which owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to carry or accommodate passengers on navigable waters of this State, to which club are admitted only duly elected or approved dues paying members in good standing of such corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in said building or on said premises a suitable kitchen and dining facility with related equipment and employs a sufficient number of persons for serving meals to members and their guests; or

2.14.4. is organized for legitimate purposes and owns or leases a building or other limited premises in any state, county or municipal park or at any airport, in which building or premises a club has been established, to which club are admitted only duly elected and approved dues paying members in good standing and their guests while in the company of a member and to which club the general public is not admitted, and which

maintains in connection with said club a suitable kitchen and dining facility and related equipment and employs a sufficient number of persons for serving meals in said club to said members and their guests.

2.15. "Record" means any manner of recording from which a transcript can be made.

2.16. "Retail liquor store" means the establishment where the private club is authorized to purchase alcoholic liquors. Such retail liquor store must be authorized by either West Virginia Code article 60-3 or West Virginia Code article 60-3A.

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

2.18. "Selling" includes solicitation or receipt of orders, possession for sale, and possession with intent to sell.

2.19. "Wine" means any beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar and includes, but is not limited to, still wines, champagne and other sparkling wines, carbonated wines, imitation wines, vermouth, cider, perry, sake, or other similar beverages offered for sale or sold as wines containing not less than seven percent (7%) nor more than twenty-four percent (24%) alcohol by volume.

§175-2-3. Licensure.

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

3.1.1. The name of the applicant.

3.1.2. 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.

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

3.1.4. If such applicant be a corporation, the names and addresses of its officers and directors. If such person be a limited liability corporation, the names and addresses of the members and managers.

3.1.5. 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.

3.1.6. Arrest record, if any, of the applicant and if the applicant be a corporation or association, the arrest record, if any, 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.)

3.1.7. Residence 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 (1) 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 (1) 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 (1) year. If the applicant be a limited liability company, the members and/or managers of the company are not required to be West Virginia residents so long as the on-site manager has been a resident of the state for a period of not less than one (1) year.

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

3.1.9. How long the club has been in existence prior to the date of the application.

3.1.10. What national organization it is affiliated with, if any, and the date of affiliation and nature thereof.

3.1.11. Number of employees.

3.1.12. Number of members of the applicant.

3.1.13. West Virginia consumers sales tax identification number.

3.1.14. West Virginia business franchise tax number.

3.1.15. West Virginia Health Department permit number to operate a restaurant.

3.1.16. Type of license applied for.

3.1.17. Application shall only be made on ~~ABCC~~ABCA Form No. 192 (also referred to as 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.

3.1.18. Is the applicant the holder of a federal gambling stamp.

3.1.19. Is the applicant the holder of a retail liquor dealer special tax stamp.

3.2. Refusal of license.

3.2.1. No license shall be issued by the Alcohol Beverage Control Administration Commissioner to any club:

3.2.1.1. That is located on any college campus, State university campus or branch thereof.

3.2.1.2. That is the holder of a federal gambling stamp or whose manager or employee is a holder thereof.

3.2.1.3. Other than those specified in paragraph (2), subdivision (1), subsection (a), section two, article seven, chapter sixty of the West Virginia Code of 1931, as amended, that discriminate against any person or group of persons.

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

3.2.1.5. 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 Alcohol Beverage Control Administration 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 is a suitable place.

3.2.2. For purposes of this regulation, the Alcohol Beverage Control Administration 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 (20%) 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:

3.2.2.1. Is not a person of good moral character or repute;

3.2.2.2. Has maintained a noisy, loud, disorderly or unsanitary establishment;

3.2.2.3. Has demonstrated, either by his or her police record or by his record as a former licensee under article sixteen, chapter eleven or chapter sixty 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;

3.2.2.4. Has the general reputation of drinking alcoholic beverages or nonintoxicating beer to excess, or is addicted to the use of controlled substances;

3.2.2.5. Has misrepresented a material fact in applying to the Alcohol Beverage Control Administration Commissioner for a license.

3.2.3. For purposes of this regulation, the Alcohol Beverage Control Administration Commissioner shall refuse to grant any license if he or she 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 (20%) 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:

3.2.3.1. Is not ~~eighteen (18)~~ twenty-one (21) years of age or older;

3.2.3.2. 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 (5) years next preceding successful completion of all conditions of probation, discharge from parole supervision or expiration of sentence;

3.2.3.3. Has been convicted of violating any alcoholic liquor laws, rules or regulations, or any beer laws, rules or regulations of any state or the United States, and upon such conviction the applicant shall not be eligible for licensure within five (5) years next preceding successful completion of all conditions of probation, discharge from parole supervision or expiration of sentence;

3.2.3.4. Has had any license revoked under the alcoholic liquor laws rules or regulations, or the beer laws, rules or regulations of any state or the United States within five (5) years next preceding the filing date of the application;

3.2.3.5. 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;

3.2.3.6. Is a person to whom alcoholic beverages may not be sold under the provisions of chapter sixty of the West Virginia Code;

3.2.3.7. Has been adjudicated an incompetent;

3.2.3.8. Is an officer or employee of the Alcohol Beverage Control Administration Commissioner of West Virginia; or

3.2.3.9. Is violating or allowing the violation of any provision of chapter sixty, chapter sixty-one or article sixteen, chapter eleven of the Code, in its establishment at the time its application for a license is pending or at any time during either the current licensed period or the immediately preceding licensing period.

3.2.4. No license shall be issued by the Alcohol Beverage Control Administration Commissioner to a private club if the place to be occupied by the applicant:

3.2.4.1. 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 Alcohol Beverage Control Administration Commissioner.

3.2.4.2. Is so located that violations of chapter sixty of the West Virginia Code, or of the rules and regulations of the Alcohol Beverage Control Administration 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.

3.2.4.3. 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.

3.2.4.4. 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.

3.2.5. The Alcohol Beverage Control Administration Commissioner may refuse to issue a license if he or she 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 interests, morals, safety or welfare of the public, and, in reaching his conclusion in this respect, the Alcohol Beverage Control Administration Commissioner may consider the character, population and 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.

3.2.6. In the process of determining whether or not a license should issue, the Alcohol Beverage Control Administration Commissioner must investigate the accuracy of all allegations which could lead to denial of the license.

3.3. Type of license. - The Alcohol Beverage Control Administration Commissioner, upon a decision to grant a license, will issue said license in one (1) of two (2) categories:

Type I. - This will be a private club license issued to a nationally recognized fraternal or veterans organization, and or any other nonprofit 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.

3.4. Annual license fee. - The annual fee for a license issued under the provisions of article seven, chapter sixty of the Code, shall be as follows:

3.4.1. For a fraternal or veterans organization or a nonprofit social club, seven hundred fifty dollars (\$750).

3.4.2. For a private club other than a private club of the type specified in subsection (a) Section Six, Article Seven Chapter Sixty of the West Virginia Code, of this section, one thousand dollars (\$1,000) if determined by the Alcohol Beverage Control Administration Commissioner that such private club has less than one thousand (1,000) members and two thousand five hundred dollars (\$2,500) if such private club has one thousand (1,000) or more members. The fee for any license issued following the first day of January of any year, to expire on the thirtieth day of June of each year, shall be one half (1/2) of that previously prescribed. Such fee shall be payable to the West Virginia Alcohol Beverage Control Administration Commissioner by certified check, cashier's check or money order and must accompany the application.

3.5. Bond. - No license shall be issued until the applicant therefor has executed a bond in the penal sum of five thousand dollars (\$5,000), 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 article seven, chapter sixty 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 Administration Commissioner's Form No. 193.

3.6. 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.

3.7. License application form. - The application for license to sell alcoholic liquors by private clubs, ~~ABCC~~ ABCA Form No. 192 (also referred to as ABCC Form No. 192), is available from the West Virginia ~~ABCC~~ABCA office.

§175-2-4. Operation of Private Club.

4.1. Sale to members and guests. - No licensee is authorized to sell alcoholic liquor or nonintoxicating beer 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 Administration Commissioner. No open container or mixed drink, including nonintoxicating beer and wine, may be carried into or out of a private club or any premises licensed by the Alcohol Beverage Control Administration Commissioner.

4.2. Age for purchase of alcoholic beverages. - No licensee shall sell any alcoholic beverage or nonintoxicating beer to individuals below the age of twenty-one (21) years. The licensee shall require proof of age by way of at least one (1) of three (3) documents certifying the age of the individual, one (1) of which shall be a valid drivers license, chauffeur's license or Department of Motor Vehicles identification card showing that the holder is at least twenty-one (21) years of age. The following are considered to be valid proofs of age.

4.2.1. A valid West Virginia driver's license showing that the holder is at least twenty-one (21) years of age.

4.2.2. A valid West Virginia chauffeur's license showing that the holder is at least twenty-one (21) years of age.

4.2.3. A West Virginia Department of Motor Vehicles identification card showing that the holder is at least twenty-one (21) years of age.

4.2.4. A driver's license from another state may be accepted if there is no indication or evidence that the license has been altered.

4.2.5. Any other valid means of satisfactory proof with a picture I.D. which shows the individual to be at least twenty-one (21) 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.

4.3. Age of manager. - No licensee whose manager is under the age of twenty-one (21) years shall be eligible for license.

4.4. Inspection. - The licensee shall at reasonable times permit the immediate inspection of the licensed premises by the Alcohol Beverage Control Administration Commissioner, in order to ensure that the laws and regulations of the State and of West Virginia are enforced. Upon the presentation of credentials the licensee shall forthwith allow the Alcohol Beverage Control Administration Commissioner immediate ingress to the licensed premises, and there shall be no occasion for delay in the conduct 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.

4.5. Door marker and posting license. - Each licensee shall have at the main entrance to its private club facility in letters no higher than six (6) inches, a statement "ABCEABCA License No. _____." The license granted under article seven, chapter sixty 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.

4.6. Licensee's purchases of alcoholic liquors. - After the granting of a private club license, each holder thereof shall purchase alcoholic liquors for resale from a retail liquor store. A private club may purchase alcoholic liquors only from the retail liquor store in whose market zone it is located or from a retail liquor store located in a market zone which is contiguous to the market zone in which the private club is located; however upon a showing of good cause to the Alcohol Beverage Control Administration Commissioner, a private club will be authorized to purchase alcoholic liquors from any retail liquor store within the State. However, whenever the ABCEABCA continues to operate a retail liquor store in a market zone for which no private retail liquor store license has been issued, all private clubs located in that same market zone are required to purchase all alcoholic liquors from such ABCEABCA liquor store.

4.7. Hours for sale of alcoholic beverages. - No licensee shall sell, give or dispense alcoholic liquor or nonintoxicating beer, or permit the consumption thereof, on any licensed premises or in any rooms directly connected therewith between the hours of three o'clock a.m. and one o'clock p.m. on any Sunday; nor shall any licensee sell, give or dispense alcoholic liquors or nonintoxicating beer, or permit the consumption thereof, on

any licensed premises or in any rooms directly connected therewith, between the hours of three thirty a.m. and seven a.m. on any weekday.

4.8. 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 of sale of alcoholic liquors and nonintoxicating beer, as specified in Section 4.9 of these regulations, have expired, nor shall such licensed premises be occupied by persons any sooner than one-half (1/2) hour prior to the hours of sale of alcoholic liquors and nonintoxicating beer: Provided, That the licensed premise may be open for food sales at nine a.m. on any Sunday.

4.9. 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 (1/2) hour prior to the expiration of the hours for sale of alcoholic liquors and nonintoxicating beer, such hours being specified in Section 4.9 of these regulations.

4.10. Entranceways. - During the hours for sale of alcoholic liquors and nonintoxicating beer, all doors to and from the licensed premises shall be closed except for the ingress and egress of the members and their guests.

4.11. Suitability of kitchen and dining facilities.

4.11.1. Prior to the issuance of a private club license, all kitchen and dining facilities are to be checked by agents or employees of the Alcohol Beverage Control Administration 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 (1/4) the number of seats in such private club at any one (1) time.

4.11.2. A suitable kitchen shall contain equipment as follows:

4.11.2.1. One (1) range with oven and no fewer than two (2) burners, or a microwave oven which has a variable control and a separate range with two (2) burners;

4.11.2.2. One (1) sink with hot and cold running water;

4.11.2.3. One cold storage unit or refrigerator at least 17 (seventeen) cubic feet in size; and

4.11.2.4. Cooking utensils and pots and pans sufficient for preparation of the required meals.

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

4.11.4. A meal may consist of one (1) item or any combination of items. For example, fresh, canned and packaged chili, soup, spaghetti, fresh salad, fresh or prepackaged sandwiches, freshly prepared meats and vegetables and TV dinners will be acceptable. 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 work in the definition of meals is preparation.

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

4.12. Age of membership. - No licensee shall admit to membership any individual below the age of twenty-one (21) years, and no individual below the age of ~~twenty-one (21)~~ eighteen (18) years shall be permitted on the licensed premises of a licensee as a guest unless accompanied by the individual's parent or legal guardian.

4.13. 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.

4.14. Purchase and delivery of alcoholic beverages.

4.14.1. Article 60-3 retail liquor stores. - When a duly licensed private club purchases alcoholic liquors from a retail liquor store authorized by West Virginia Code article 60-3, money orders, certified checks, cashier' s checks and traveler's checks and cash are acceptable for payment of a the purchase . 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 Alcohol Beverage Control Administration Commissioner in a sum sufficient to bond the total amount of such purchase or purchase: 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 Alcohol Beverage Control Administration Commissioner, a line of credit issued by a duly organized national or State banking institution: Provided, however, That such purchase or purchases shall not exceed the total of the posed 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. Application for the purpose of purchasing by personal check when guaranteed by a guaranty bond or line of credit shall be obtainable from the Alcohol Beverage Control Administration 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 Alcohol Beverage Control Administration 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 five dollars (\$5.00), such sum to be charged in addition to the amount shown due on the face of the subject check or checks.

4.14.2. Article 60-3A retail liquor stores. - A retail liquor store authorized by West Virginia Code article 60-3A is authorized to establish its policy of the instruments allowed to be utilized for payment of purchases by a duly licensed private club. However, no credit may be extended by the retail liquor store to the duly licensed private club.

4.14.3 A duly licensed private club may by contract approved by the Alcohol Beverage Control Administration Commissioner receive deliveries of alcoholic liquor from a retail liquor store. For the purposes of this activity the provisions of West Virginia Code §§ 60-6-12 and 60-6-13 are not applicable.

§175-2-5. Violations.

5.1. Prohibited acts.

5.1.1. No licensee, nor any agent, employee or member thereof, shall on such licensee's premise:

5.1.1.1. Sell, or offer for sale, any alcoholic liquor or nonintoxicating beer other than from the original package or container.

5.1.1.2. Insofar as these activities are permitted by law, authorize or permit any disturbance of the

peace, or any obscene, lewd, immoral or improper entertainment, conduct or practice.

a. Guidelines for strippers.

a.1. Entertainers in "a state of undress" must be apart and separate from patrons.

a.2. There can be no physical contact during a performance between the entertainers and the patrons or employees of the club. This means no patron or employee may touch a performer.

a.3. Actions by the entertainers may not include the actual accomplishment of any sexual acts which would be considered inappropriate for public view by the public generally.

a.4. All acts during which entertainers are in a state of undress will take place on stage which must be separate and apart from patrons and/or employees. Upon leaving the stage, entertainers must go directly to the assigned dressing room where he or she shall dress adequately by covering himself or herself prior to mingling among patrons and other employees.

5.1.1.3. Sell, give away or permit the sale of, gift to, consumption of or the procurement of any alcoholic liquors or nonintoxicating beer, for any person under the age of twenty-one (21) years, any mental incompetent, or person who is visibly physically incapacitated due to the consumption of alcoholic liquor or nonintoxicating beer, or the use of any controlled substance as specified in chapter sixty-a of the West Virginia Code of 1931, as amended.

5.1.1.4. Permit the consumption by, or serve to, on the licensed premises, any alcoholic liquors or nonintoxicating beer, to any person under the age of twenty-one (21) years.

5.1.1.5. With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor or nonintoxicating beer.

5.1.2. 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 nonintoxicating beer may be purchased thereat.

5.1.3. 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.

5.1.4. 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.

5.2. Public nuisance. - If it is determined by law that any club which is licensed pursuant to article seven, chapter sixty 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 Alcohol Beverage Control Administration Commissioner, until such nuisance is abated.

§175-2-6. Hearing and Appeal Procedure.

6.1. Order refusing license, suspending or revoking same. - If the Alcohol Beverage Control Administration Commissioner refuses to issue a license or suspends or revokes a license, he or she 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.

6.2. 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 Alcohol Beverage Control Administration Commissioner or a person designated by him or her as hearing examiner: Provided, That a petition in writing for such a hearing is served upon the Alcohol Beverage Control Administration Commissioner within ten (10) days following the receipt by such applicant or licensee of said copy of said order.

6.3. 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, facsimile transmission, electronic mail, telephone call, letter or similar communication will be regarded as a petition. The petition must contain the following:

6.3.1. A clear and concise assignment of each error which the petitioner alleges to have been committed by the Alcohol Beverage Control Administration Commissioner in the determination of a violation, with each assignment of error being shown in separately numbered paragraphs.

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

6.3.3. A prayer setting forth the relief sought.

6.3.4. The signature of the petitioner or its officers signing such petition.

6.3.5. A verification by the petitioner.

6.4. Form for petition. - A petition for hearing shall be in the form set forth below.

PETITION FOR HEARING

To: West Virginia
Alcohol Beverage
Control Administration Commissioner
~~2019 Washington St., E.~~
322 70th Street, S.E.
Charleston, WV 25304

(For Administration ~~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 ABCA 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 the Alcohol Beverage Control Administration 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 Alcohol Beverage Control Administration 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 ~~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 _____

Notary Public

6.5. 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) and said cost deposit shall be advanced by certified check, cashier's check or money order and shall accompany the petition demanding a hearing.

6.6. Subpoenas and subpoenas duces tecum. - In all hearings held under article seven, chapter sixty 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 Administration Commissioner or by the licensee, the same to be issued by either the Commissioner or his duly appointed hearing examiner.

6.6.1. Every such subpoena and/or subpoena duces tecum shall be served at least five (5) days before the return date thereof, either by personal service made by any person eighteen (18) years of age or older or by registered 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.

6.6.2. All subpoenas and subpoenas duces tecum will be issued in the name of the Alcohol Beverage Control Administration Commissioner, 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 Administration Commissioner are to be the responsibility of such Commissioner. 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 attendance and travel of witnesses shall be the same as for witnesses before the circuit courts of this State.

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

6.6.4. 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.

6.6.5. All requests by the licensee or the Alcohol Beverage Control Administration Commissioner 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.

6.6.6. 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 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 Alcohol Beverage Control Administration Commissioner, shall compel obedience by attachment proceeds 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.

6.7. Stay of suspension or revocation order. - The service of a petition for hearing upon the Alcohol Beverage Control Administration Commissioner shall operate, other than herein provided, to suspend the execution of any revocation of suspension of a private club license with respect to which a hearing is being demanded except:

6.7.1. An order suspending a license for failure of said license to keep the bond, required by section four, article seven, chapter sixty of the West Virginia Code of 1931, as amended, in full force and effect, and

6.7.2. A suspension or revocation order issued pursuant to Regulation No. 4.2.

6.8. Hearing date. - The Alcohol Beverage Control Administration Commissioner shall set a date for any hearing demanded and notify the person demanding such hearing of the date and time of said hearing. ~~which said hearing shall be held within thirty (30) days after receipt of said demand.~~

6.9. Place of hearing. - Hearings will be held in Charleston, West Virginia, unless the Alcohol Beverage Control Administration Commissioner determines otherwise.

6.10. 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 Alcohol Beverage Control Administration Commissioner deems adequate.

6.11. 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.

6.12. Hearing. - The Alcohol Beverage Control Administration Commissioner may designate an examiner to conduct the hearing.

6.12.1. 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 agent's authority must be presented to the satisfaction of the Alcohol Beverage Control Administration Commissioner.

6.12.2. The petitioner, his or her duly authorized representative or agent, may with the approval of the Alcohol Beverage Control Administration 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.

6.13. Argument and briefs. - Petitioners will be given an opportunity for argument within the time limits fixed by the Alcohol Beverage Control Administration 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.

6.14. Evidence admissible at hearing. - The Alcohol Beverage Control Administration 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 Alcohol Beverage Control Administration Commissioner may exclude any evidence which is irrelevant, unduly repetitious, or lacking in substantial probative effect.

6.15. Record of proceedings. - There shall be a record made at all hearings held pursuant to article seven, chapter sixty of the West Virginia Code of 1931, as amended, and these duly promulgated regulations.

6.16. Alcohol Beverage Control Administration Commissioner's decision. - After the conclusion of the hearing or within ten (10) days of receipt of the transcript thereof, 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. Thereafter, the Commissioner within ten (10) days of receipt of such recommended decision, shall either accept or reject such recommended decision, and if he or she shall accept such decision, he or she shall sign and acknowledge the same as his or her own after having reviewed the transcript and all exhibits attached and affixed thereto, and if he or she shall reject the same, he or she shall within ten (10) days of receipt of such recommended decision prepare a decision setting forth his or her own findings of fact and conclusions of law. In either event, the order signed by the Alcohol Beverage Control Administration 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.

6.17. 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 Administration Commissioner.

6.18. Supreme Court of Appeals. - An appeal may be taken by the applicant or licensee, or by the Alcohol Beverage Control Administration 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.

§175-2-7. Severability.

The sections and subsection 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, That such remaining portions are not determined to be inseparable, and to this end these regulations are declared separable.