

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Alcohol Beverage Control Commission TITLE NUMBER: 175

CITE AUTHORITY 60-7-10 and 29A-3-1

AMENDMENT TO AN EXISTING RULE: YES 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, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Donald L Stemple
Donald Stemple, Commissioner

TITLE 175
LEGISLATIVE REGULATIONS RULE
ALCOHOL BEVERAGE CONTROL COMMISSIONER

SERIES 2
PRIVATE CLUB LICENSING

§175-2-1. General.

~~1.1. Type of Regulation. These regulations are legislative regulations as defined in West Virginia Code § 29A-3-1 et seq.~~

1.1. Scope. - ~~This proposed modification of the current legislative regulation amend 175-C.S.R. 2 which regulates the licensing of private clubs by establishing reasons to the Commissioner may use in refusing to grant a license for a private club. This proposed modification of 175 C.S.R. 2, a current legislative rule specifies the licensure requirements, reasons for denial of a license, reasons for revocation or suspending a license as well as hearing procedures. The requested modifications to the rule are to bring it into proper form and format as well as update the language and usage common to the industry.~~

1.2. Authority. - ~~These legislative regulations are authorize by West Virginia Code W. Va. Code §29A-3-1 et seq. and §60-7-10~~

1.3. Filing Date. ~~October 12, 1990.~~

1.4. Effective Date. ~~These legislative regulations became effective upon being approved by the Legislature.~~

~~1.6. Citation. These modified proposed legislative regulations may be cited as 175 C.S.R. 2, § _____ (1990)~~

§175-2-2. Definitions.

As used in ~~these regulations~~ this rule 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 ~~does 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 W. Va. Code article~~ §60-7-1 et seq.

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. "Commissioner," "Alcohol Beverage Control Commissioner", or "ABCC" means the West Virginia Alcohol Beverage Control 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~~ includes, 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~~ means an individual, firm, partnership, limited partnership, corporation, limited liability company 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, but not limited to lodging, places that sell food, 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~~ by the Commissioner to sell alcoholic liquors for consumption on the premises.

2.14. "Private club" means any corporation, limited liability company 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 licensed to sell alcoholic liquors to the public in West Virginia by the Commissioner as authorized by either W.Va. Code §60-30-1 et seq., or W.Va. Code §60-3A-1 et seq. ~~West Virginia Code article 60-3 or West Virginia Code article 60-3A.~~

2.17. "Sale" means any transfer, exchange of goods or services, in exchange for money, currency, checks, credit cards 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~~ the applicant be an unincorporated association, the names and addresses of members of its governing board.

3.1.4. If ~~such~~ the applicant be a corporation, the names and addresses of its officers and directors. If such person be a limited liability company, 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~~ two (2) years. 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.~~ 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 two (2) years. 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~~ two (2) years. If the applicant be a limited liability company or corporation, 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 two (2) years.

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 Form No. 192 (Attachment I). ~~Said~~ This 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 Commissioner to any club:

3.2.1.a.~~1~~. That is located on any college campus, State university campus or branch thereof.

3.2.1.b.~~2~~. That is the holder of a federal gambling stamp or whose manager or employee is a holder ~~thereof~~ of a federal gambling stamp.

3.2.1.c.~~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, W.Va.~~

Code §60-7-2(a),(1), (2) that discriminate against any person or group of persons.

3.2.1.d.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.e.5- That is not a bona fide private club of good reputation in the community in which it ~~shall~~ operates. 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 is a suitable place.

3.2.2. For purposes of ~~this regulation~~ this rule, 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 (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.a.1- Is not a person of good moral character or repute;

3.2.2.b.2- Has maintained a noisy, loud, disorderly or unsanitary establishment;

3.2.2.c.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~~ W.Va. Code §11-16-1 et seq., or §60-1-1 et seq., 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.d.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.e.5- Has misrepresented a material fact in applying to the Commissioner for a license.

3.2.3. For purposes of ~~this regulation~~ rule, the 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.a.1- Is not ~~eighteen (18)~~ twenty-one (21) years of age or older;

3.2.3.b.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.c.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.d.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.e.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.f.6. Is a person to whom alcoholic beverages may not be sold under the provisions of ~~chapter sixty of the West Virginia Code~~ W. Va. Code §60-1-1 et seq.;

3.2.3.g.7- Has been adjudicated an incompetent;

3.2.3.h.8- Is an officer or employee of the Alcohol Beverage Control Commissioner of West Virginia; or

3.2.3.i.9- Is violating or allowing the violation of any provision of ~~chapter sixty, chapter sixty one or article sixteen, chapter eleven of the Code~~ W. Va. Code §§60-1-1 et seq., 61-1-1 et seq., or 11-16-1 et seq., 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 Commissioner to a private club if the place to be occupied by the applicant:

3.2.4.a.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 ~~regulation~~ rules of the Commissioner.

3.2.4.b.2- Is so located that violations of ~~chapter sixty of the West Virginia Code~~ W. Va. Code §60-1-1 et seq., 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.

3.2.4.c.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 the~~ license will adversely affect or interfere with normal, orderly conduct of the affairs of such facilities or institutions.

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

3.2.5. The Commissioner may refuse to issue a license if he ~~or she has~~ 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 ~~or her~~ conclusion in this respect, the 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 Commissioner must investigate the accuracy of all allegations, which could lead to denial of the license.

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

Type I. - This ~~is for~~ 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 ~~is for~~ will be issued to a social organizations or corporations operated for legitimate purposes and for profit, ~~which~~ pays 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 licenses issued under the provisions of ~~article seven, chapter sixty of the Code~~ W.Va. Code §60-7-1 et seq., shall be as follows:

3.4.1. For a fraternal or veterans organization or a nonprofit social club, seven hundred fifty dollars (\$750.00).

3.4.2. For a private club other than a private club of the type specified in W. Va. Code §60-8-6 subsection (a) Section Six, Article Seven Chapter Sixty of the West Virginia Code, of this section, one thousand dollars (\$1,000.00) if determined by the Commissioner that such private club has less than one thousand (1,000) members and two thousand five hundred dollars (\$2,500.00) 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~~ will 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.

3.5. Bond. - No license ~~shall~~ will be issued until the applicant therefor has executed a bond in the penal sum of five thousand dollars (\$5,000.00), payable to the State of West Virginia. The surety on ~~said~~ the bond shall be executed by a corporate surety authorized to transact business in the State of West Virginia, which bond ~~shall~~ will be conditioned on the payment of all fees prescribed by law and on the faithful performance of, and compliance with the provisions of W. Va. Code § 60-7-1 et seq. article seven, chapter sixty of the West Virginia Code of 1931, as amended, and these this rules duly promulgated thereunder, and the same shall be done on Alcohol Beverage Control Commissioner's Form No. 193.

3.6. License not transferable. - A license issued under the provision of these rules and regulations ~~shall~~ will 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~~ the new owners must make application as prescribed, then such violation shall constitute grounds for revocation of ~~such~~ their license that they are then operating under.

3.7. License application form. - The application for license to sell alcoholic liquors by private clubs, ABCC Form No. 192 is available from the West Virginia ABCC 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 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~~ 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. showing ~~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 Commissioner, in order to ensure that the laws and ~~regulations~~ rules of the State of West Virginia are enforced. Upon the presentation of credentials the licensee ~~shall forthwith~~ will allow the Commissioner immediate ~~ingress~~ access 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~~ the inspection.

Any evidence of a violation found during an inspection ~~shall~~ will be seized and impounded by the Commissioner 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 "ABCC License No. _____." The licenses granted under ~~article seven, chapter sixty of the West Virginia Code of 1931, as amended,~~ W.Va. Code §60-7-1 et seq., and these ~~regulations~~ rules ~~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~~ that is contiguous to the market zone in which the private club is located. ~~However,~~ Upon a showing of good cause to the Commissioner, a private club will be authorized to purchase alcoholic liquors from any retail liquor store within the State. ~~However,~~ Whenever the ABCC 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 ABCC 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. (3:00 AM) and one o'clock p.m. (1:00 PM) 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. (3:30 AM) and seven a.m. (7:00 AM) 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 shall not 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. (9:00 AM) 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~~ 4.8 of ~~these regulations~~ this rule.

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 Commissioner for their suitability in serving food to their members and their guests. Equipment in ~~such~~ the 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~~ the private club at any one (1) time.

4.11.2. A suitable kitchen shall contain equipment as follows:

4.11.2.~~a.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.~~b.2~~ One (1) sink with hot and cold running water;

4.11.2.~~c.3~~ One cold storage unit or refrigerator at least 17 (seventeen) cubic feet in

size; and

4.11.2.d.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~~ are acceptable or ~~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~~ word 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 (10:00) p.m. ~~For example, Cold~~ sandwiches which can be made in advance and refrigerated for use after ten (10:00) 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. Retail Liquor Stores Payments For Purchases ~~Article 60-3 Retail liquor stores.~~ - When a duly licensed private club purchases alcoholic liquors from a retail liquor store authorized by ~~West Virginia~~ W.Va. Code ~~article~~ §60-3-1 *et seq.*, 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 Commissioner in a sum sufficient to bond the total amount of such purchase(s) ~~or purchases;~~ provided that such purchase(s) ~~or purchases shall~~ do 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~~

4.14.1.a. A duly licensed private club may, in addition to the 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 ~~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.

4.14.1.b. Application 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.

4.14.1.c. 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 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 .~~ Credit by retail liquor stores to private clubs forbidden. W.Va. Code §60-3A-1 *et seq* - A retail liquor store ~~authorized by West Virginia Code article 60-3A the Commissioner~~ is authorized to establish its policy of the instruments allowed to be utilized for payment of purchases by a duly licensed private club. ~~However, a~~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 Commissioner, receive deliveries of alcoholic liquor from a retail liquor store. For the purposes of this activity the provisions of W. Va. 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.a. ~~4.~~ Sell, or offer for sale, any alcoholic liquor, or nonintoxicating beer other than from the original package or container.

5.1.1.b. ~~2.~~ Insofar as these activities are ~~permitted~~ prohibited by law, authorize or permit any disturbance of the peace, or any obscene, lewd, immoral or improper entertainment, conduct or practice.

~~a.~~ 5.1.1.b.1 Guidelines for strippers.

~~a.1.~~ 5.1.1.b.1.A. Entertainers in "a state of undress" must be apart and

separate from patrons.

~~a-2~~ 5.1.1.b.1.B. 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~~ 5.1.1.b.1.C. 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~~ 5.1.1.b.1.D. 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.c.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.~~ W.Va. Code §60A-1-1 et seq.

~~5.1.1.d.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.e.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.~~ at the private club.

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 W. Va. §60-7-1 et seq. ~~article seven, chapter sixty of the West Virginia Code of 1931, as amended,~~ and ~~these regulations~~ this rules, shall ~~constitutes~~ may be a public nuisance to any church, school, hospital, public institution or otherwise, then such license ~~shall~~ may be revoked or suspended, the same being at the sound discretion of the 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~~ 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 the~~ order to the licensee, or serve ~~the it 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 an such order of the Commissioner, shall have the right to a hearing ~~thereon~~ before the Commissioner or a person designated by him or her as hearing examiner. ~~; provided that~~ A petition in writing requesting for such a hearing must be ~~is~~ served upon the Commissioner within ten (10) days following the receipt by the such applicant or licensee of ~~said copy of the said~~ order.

6.3. Petition requirements. - The petition for a hearing ~~is to~~ shall be in writing. ~~with~~ An original and one (1) copy of the petition shall be served upon the Commissioner. 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 Commissioner in the determination of a licensee's 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 Commissioner
~~2019 Washington St., E.~~ 322 70th Street, S.E.
Charleston, WV 25304

(For Commission Use Only)

Docket No. _____

Date of Order of Suspension or Revocation or Denial of License: _____

Whether Suspension or Revocation or Denial of License _____

In the Matter of: Petitioner's Business Name _____

Petitioner's ABCC License No. (Not applicable for Applicants License Denial) _____

Address _____

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

First: Your petitioner admits as true and correct all of the determinations made by the 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~~ any 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~~ the hearing in the amount of three hundred dollars (\$300.00). ~~and said~~ The cost deposit ~~shall~~ will 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 W.Va. Code §60-7-1 et seq., ~~under article seven, chapter sixty of the West Virginia Code of 1931, as amended, and these regulations this duly promulgated rule~~, 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.

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 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 Commissioner are to be the responsibility of ~~such the~~ 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~~ 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 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 the 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 Commissioner, shall compel obedience by attachment ~~proceeds~~ 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.

6.7. 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 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, W. Va. Code §60-7-4~~ in full force and effect, and

6.7.2. A suspension or revocation order issued pursuant to ~~Regulation No. Section 4.2. of this rule.~~

6.8. Hearing date. - The Commissioner shall set a date for any hearing demanded and notify the person demanding ~~such~~ the hearing of the date and time of the 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 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 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 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 Commissioner.

6.12.2. The petitioner, his or her 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.

6.13. Argument and briefs. - Petitioners will be given an opportunity for argument within the

time limits fixed by the Commissioner following submission of evidence. The Commissioner ~~will~~ may accept briefs in lieu of argument. Briefs must be filed within ten (10) days after the hearing.

6.14. 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~~ 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.

6.15. Record of proceedings. - There shall be a record made at all hearings held pursuant to W. Va. Code §60-7-1 et seq. ~~article seven, chapter sixty of the West Virginia Code of 1931, as amended, and this rule. these duly promulgated regulations.~~

6.16. 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 ~~the such~~ recommended decision, shall either accept or reject ~~the such~~ recommended decision, ~~and~~ If he or she shall accepts the 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 rejects the decision same, he or she shall within ten (10) days of receipt of ~~the 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 Commissioner shall be final unless vacated or modified upon judicial review. ~~thereof.~~ A copy of ~~the said~~ order shall be served upon each party to the hearing and ~~their~~ attorneys 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 ~~the said~~ party received notice of the final order of the Alcohol Beverage Control Commissioner.

~~6.18. 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.~~

~~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.~~