



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

4/1/2021 4:33:12 PM

Office of West Virginia  
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Alcohol Beverage Control Commission

TITLE-SERIES: 175-02

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Private Club Licensing

CITE STATUTORY AUTHORITY: §60-2-16, §60-2-17, and §60-7-10

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB 160

Section 175 CSR 2

Passed On

3/23/2021 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 15, 2021

This rule shall terminate and have no further force or effect from the following date:

April 15, 2026

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 175  
LEGISLATIVE RULE  
ALCOHOL BEVERAGE CONTROL COMMISSIONER

SERIES 2  
PRIVATE CLUB LICENSING

**§175-2-1. General.**

1.1. Scope. -- This legislative rule specifies the licensure requirements, reasons for denial of a license, reasons for revocation or sanctioning and/or suspending a license, as well as hearing procedures.

1.2. Authority. -- W. Va. Code §60-2-16, §60-2-17, and §60-7-10.

1.3. Filing Date. -- April 1, 2021.

1.4. Effective Date. -- April 15, 2021.

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect upon April 15, 2026.

**§175-2-2. Definitions.**

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

2.1 The “ABCA” refers to the West Virginia Alcohol Beverage Control Administration or Commission.

2.2. “Alcoholic liquor” means alcohol, beer, including barley beer, wine, including barley wine and distilled spirits, and any liquid or solid capable of being used as a beverage, but does not include wine with an alcohol content of 14% or less by volume, nonintoxicating beer, or nonintoxicating beverages.

2.3. “Applicant” means a private club applying for a license under the provisions of W. Va. Code §60-7-1 *et seq.*

2.4. “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 or nonintoxicating craft beer and shall be included in the definition of “liquor” and “alcoholic liquor”, as used in W.Va. Code §11-16-1 *et seq.*: *Provided*, That in the Liquor Control Act, “beer” shall not be construed to include or embrace nonintoxicating beer or nonintoxicating craft beer.

2.5. “Code” means the official Code of West Virginia, 1931, as amended.

2.6. “Commissioner” or “Alcohol Beverage Control Commissioner” means the Commissioner of the West Virginia Alcohol Beverage Control Administration (ABCA or Commission) or his or her delegate.

2.7. Commissioner’s Forms: “ABCA” form designation means documents used by ABCA.

2.8. “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 including, but not 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.

2.9. “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 14% alcohol by volume.

2.10. “Growler” means a container or jug that is made of glass (also a 32 ounce glass container, referred to as a howler), ceramic, metal (also a canned type of metal growler referred to as a crowler) or other material approved by the Commissioner, that may be no larger than 128 fluid ounces in size and must be capable of being securely sealed. The growler is utilized by an authorized licensee for purposes of off-premises sales only of nonintoxicating beer or nonintoxicating craft beer for personal consumption not on a licensed premises and not for resale. A securely sealed growler is not an open container under state and local law. A growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. The secure sealing of a growler requires the use of a tamper-resistant seal, security tape, or other material, as approved by the Commissioner, placed on or over the growler’s opening. The seal, security tape, or other material must be clearly marked with the date of the secure sealing by the authorized licensee who is selling the growler.

2.11. “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.

2.12. “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 11.9% of alcohol by weight, or 15% by volume, whichever is greater, with no caffeine infusion or any additives masking or altering the alcohol effect. The word “liquor” as used in W. Va. Code §60-1-1 *et seq.*, does not include or embrace nonintoxicating beer nor any of the beverages, products, mixtures, or preparations included within this definition. For the purposes of this definition “infusion” means and includes to artificially add, input or otherwise deliver caffeine or any other additive, not a true flavoring or coloring, that would mask or alter the alcohol effect in nonintoxicating beer.

2.13. “Nonintoxicating craft beer” means any beverage obtained by the natural fermentation of barley, malt, hops, or any other similar product or substitute and containing not less than one half of one percent (.5%) by volume and not more than 15% alcohol by volume or 11.9% alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect. For the purposes of this definition “infusion” means and includes any artificially added, input, or otherwise delivered caffeine or any other additive, not a true flavoring or coloring, that would mask or alter the alcohol effect in nonintoxicating craft beer.

2.14. “Liquor Control Act” means Chapter 60 of the Code.

2.15. “Manager” means an individual who is the applicant’s or licensee’s on-premises employee, member, partner, shareholder, director, or officer who meets the licensure requirements of W. Va. §60-7-1 *et seq.* and rules promulgated thereunder who actively manages, conducts, and carries on the day-to-day operations of the applicant or licensee with full and apparent authority or actual authority to act on behalf of the applicant or licensee. Such duties include but are not limited to: coordinating staffing; reviewing and approving payroll; ordering and paying for inventory, such as nonintoxicating beer, wine, and liquor, as applicable; and managing security staff, security systems, video, and other security equipment; and any further acts or actions involved in managing the affairs of the business, on behalf of owners, partners, members, shareholders, officers, or directors.

2.16. “Market zone” means the geographical area designated as such by the Retail Liquor Licensing

Board for the purpose of issuing retail liquor outlet licenses.

2.17. "Person" means an individual, firm, partnership, limited partnership, corporation, limited liability company, or voluntary association.

2.18. "Public place" means any place, building, or conveyance to which the public has, or is permitted to have access, including, but not limited to establishments that provide lodging, places that sell food, for consumption on or off the premises including, but not limited to, vessels, parks, airports, and any highway, street, lane, park, or place of public resort or amusement: *Provided*, That the term "public place" does not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed by the Commissioner to sell alcoholic liquors for consumption on the premises, nor shall the term "public place" mean or include any legally demarcated area designated solely for the consumption of beverages and freshly prepared food that directly connects and adjoins any portion or portions of a premises that qualifies and is licensed under the provisions of Chapter 60 of the West Virginia Code to sell alcoholic liquors for consumption thereupon, which may include certain legally demarcated deck areas or other areas that meet the requirements specified in this proviso and further that legal demarcation includes, but is not limited to, ABCA rules; local ordinances; county zoning requirements; Americans with Disabilities Act requirements; State Fire Marshal requirements; any other applicable laws, including, but not limited to, state and federal law; public safety requirements and so forth: *Provided however*, That the term "public place" also does not include a facility constructed primarily for the use of a Division I, II, or III college that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer or other Division I, II or III sports stadium and also which holds a special license to sell wine pursuant to the provisions of W.Va. Code §60-8-3, in the designated areas of sale and consumption of wine and other restrictions established by that section and the terms of the special license issued thereunder.

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

2.19.1. Belongs to or is affiliated with a nationally recognized fraternal or veterans organization that is operated exclusively for the benefit of its members and pays no part of its income to its shareholders or individual members; owns or leases a building or other premises such as vessels, parks, and airports; admits 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 does not admit the general public; and maintains in said building or premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests; or

2.19.2. Is a nonprofit social club operated exclusively for the benefit of its members; pays no part of its income to its shareholders or individual members; owns or leases a building or other premises; grants admission to 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 does not allow admission of the general public; and 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

2.19.3. Is organized and operated for legitimate purposes and has at least 100 duly elected or approved dues paying members in good standing; 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; admits 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 does not admit the general public; 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

2.19.4. 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; grants admission to only duly elected and approved dues paying members in good standing and their guests while in the company of a member and does not admit the general public; 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 their members and guests.

2.20. “Private fair and festival” means an applicant for a private club or a licensed private club meeting the requirements of W. Va. Code §60-7-8a for a temporary private club event or Class S2 license, and the criteria set forth in this subsection which:

2.20.1. Has at least 100 members;

2.20.2. Has been sponsored, endorsed, or approved, in writing, by the governing body (or its duly elected or appointed officers) of either the municipality or of the county wherein the festival, fair, or other event is to be conducted;

2.20.3. Shall prepare, provide, or engage a food caterer to provide adequate freshly prepared food or meals to serve its stated members and guests who will be attending the temporary festival, fair, or other event, and further shall provide any documentation or agreements of such to the Commissioner prior to approval;

2.20.4. Shall not use third-party entities or individuals to purchase, sell, furnish, or serve alcoholic liquors (liquor and wine), nonintoxicating beer, or nonintoxicating craft beer;

2.20.5. Shall provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the festival, fair, or other event;

2.20.6. Shall provide a floorplan for the proposed premises with a defined and bounded area to safely account for the ingress and egress of stated members and guests who will be attending the festival, fair, or other event; and

2.20.7. Utilizes an age verification system approved by the Commissioner.

2.21. “Private hotel” means an applicant for a private club or licensed private club licensee which:

2.21.1. Has at least 2,000 members;

2.21.2. Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 30 separate bedrooms, and also offers a conference center for meetings;

2.21.3. Operates a restaurant and full kitchen with ovens, four-burner ranges, walk-in freezers, and other kitchen utensils and apparatus, as determined by the Commissioner, on the licensed premises and serves freshly prepared food at least 20 hours per week;

2.21.4. Maintains, at any one time, \$2,500.00 of fresh food inventory capable of being prepared in the private hotel’s full kitchen, and in calculating the food inventory the Commissioner may not include microwavable, frozen, or canned foods;

2.21.5. Owns or leases, controls, operates, and uses acreage amounting to more than one acre but fewer than three acres, which are contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for hotel and conferences and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

2.21.6. Lists in the application the acreage referenced in subsection 2.20.5. and the entire property and all adjoining buildings and structures on the private hotel's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private hotel's licensed premises and as noted on the private hotel's floorplan;

2.21.7. Has an identified person, persons, or entity that has right, title and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises; and

2.21.8. Utilizes an age verification system approved by the Commissioner.

2.22. "Private resort hotel" means an applicant for a private club or licensed private club licensee which:

2.22.1. Has at least 5,000 members;

2.22.2. Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 50 separate bedrooms;

2.22.3. Operates a restaurant and full kitchen with ovens, six-burner ranges, walk-in freezers, and other kitchen utensils and apparatus, as determined by the Commissioner, on the licensed premises and serves freshly prepared food at least 25 hours per week;

2.22.4. Maintains, at any one time, \$5,000 of fresh food inventory capable of being prepared in the private resort hotel's full kitchen, and in calculating the food inventory the Commissioner may not include microwavable, frozen, or canned foods;

2.22.5. Owns or leases, controls, operates, and uses acreage amounting to at least 10 contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for destination, resort, and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

2.22.6. Lists the entire property from subsection 2.21.5. and all adjoining buildings and structures on the private resort hotel's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private resort hotel's licensed premises and as noted on the private resort hotel's floorplan;

2.22.7. Has an identified person or persons or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

2.22.8. Utilizes an age verification system approved by the Commissioner; and

2.22.9. May have a separately licensed resident brewer with a brewpub license inner-connected via a walkway, doorway, or entryway, all as determined and approved by the Commissioner, for limited access during permitted hours of operation for tours and complimentary samples at the resident brewery.

2.23. “Private golf club” means an applicant for a private club or licensed private club licensee which:

2.23.1. Has at least 100 members;

2.23.2. Maintains at least one 18-hole golf course with separate and distinct golf playing holes, not reusing nine golf playing holes to comprise the 18 golf playing holes, and a clubhouse;

2.23.3. Operates a restaurant and full kitchen with ovens, as determined by the Commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

2.23.4. Owns or leases, controls, operates, and uses acreage amounting to at least 80 contiguous acres of bounded or fenced real property which would be listed on the private golf club’s floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

2.23.5. Lists the entire property from subsection 2.23.4. and all adjoining buildings and structures on the private golf club’s floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private golf club’s licensed premises and as noted on the private golf club’s floorplan;

2.23.6. Has an identified person or persons or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises; and

2.23.7. Utilizes an age verification system approved by the Commissioner.

2.24. “Private nine-hole golf course” means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

2.24.1. Has at least 50 members;

2.24.2. Maintains at least one nine-hole golf course with separate and distinct golf playing holes;

2.24.3. Operates a restaurant and full kitchen with ovens, as determined by the Commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

2.24.4. Owns or leases, controls, operates, and uses acreage amounting to at least 30 contiguous acres of bounded or fenced real property which would be listed on the private nine-hole golf course’s floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

2.24.5. Lists the entire property from subsection 2.24.4. and all adjoining buildings and structures on the private nine-hole golf course’s floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private nine-hole golf course’s licensed premises and as noted on the private nine-hole golf course’s floorplan;

2.24.6. Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises; and

2.24.7. Utilizes an age verification system approved by the Commissioner.

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

2.26. "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 in the original package for consumption off the premises, to the public in West Virginia by the Commissioner as authorized by either W. Va. Code §60-3-1 *et seq.* or W. Va. Code §60-3A-1 *et seq.*

2.27. "Sale" means any transfer or 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.

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

2.29. "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 nor more than 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 signatures, citizenship, address, and residence of the applicant and manager.

3.1.2. The place at which such applicant will conduct its operations, whether it is owned or leased by applicant; and if leased, from whom, giving names and addresses of all lessors.

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

3.1.4. If the applicant is 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/or 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 manager, and if the applicant is a corporation, limited liability company, partnership or association the arrest record, if any, of the officers, directors, partners, members, managers, or stewards including disposition of same.

3.1.6.a. The Commissioner shall conduct background investigations for the purpose of determining whether the applicant or the applicant's manager has been charged with, indicted for, or convicted of a crime that may have bearing upon the applicant or the applicant's manager's fitness to hold a private club license. For purposes of this paragraph, "background investigation" means a security,



criminal and credit investigation of an applicant and manager who has applied for the issuance or renewal of a private club license pursuant to W. Va. Code §60-7-1 *et seq.* The applicant will submit West Virginia Alcohol Beverage Control Administration Release of Information and Waiver of Confidentiality of Records Form on the form provided by the Commissioner. The applicant will also submit a full set of fingerprints to facilitate a criminal background check and the ABCA will request the state police to submit the fingerprints and identifying information to the Federal Bureau of Investigation for a national criminal history record check. The results of the fingerprint check will be returned to the ABCA.

3.1.6.b. The applicant will reimburse the ABCA for all fees or charges that are incurred by the ABCA for the background investigation.

3.1.7. Manager requirement. - No licenses shall be given to any applicant or renewed for any licensee who has not listed a manager on the applicant's license application, or a licensee's renewal application, and further that the manager shall meet all other requirements of licensure, including, but not limited to, United States citizenship or naturalization, passing a background investigation, being at least 21 years of age, being a suitable person, being of good morals and character, being capable of operating a bona fide private club of good reputation in the community, and other requirements, all as set forth in the code and the legislative rules, in order for the manager to be able to meet and conduct any regulatory matters, including, but not limited to: licensure or enforcement matters related to the applicant or licensee all in the interest of protecting public health and safety and being a suitable applicant or licensee. In order to maintain active licensure, any change by a licensee in any manager listed on a license or renewal application shall be made immediately to the Commissioner, to verify that the new manager meets licensure requirements.

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 the form provided by the Commissioner or available on the ABCA website at [www.abca.wv.gov](http://www.abca.wv.gov). This form must be completed in its entirety and failure to complete all questions shall constitute grounds for refusal to grant a license.

3.1.18. Whether the applicant is the holder of a federal gambling stamp.

3.1.19. Whether the applicant is 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 private club:

3.2.1.a. That is located on any college campus, state university campus, or branch thereof.

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

3.2.1.c. That discriminates against any person or group of persons in violation of applicable state or federal law: Provided, That a license cannot be refused based on unlawful discrimination.

3.2.1.d. 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. That is not a bona fide private club of good reputation in the community in which it 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.

3.2.1.f. That fails to have the applicant and manager attest that the information in the application is true and accurate.

3.2.2. The Commissioner may 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 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. Is not a person of good moral character or repute;

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

3.2.2.c. Has demonstrated, either by his or her police record or by his record as a former licensee under W. Va. Code §11-16-1 *et seq.* or Chapter 60 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.d. 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. Has misrepresented a material fact in applying to the Commissioner for a license; or

3.2.2.f. Has not listed accurate and complete ownership information.

3.2.3. For purposes of this 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 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. Is not 21 years of age or older;

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

3.2.3.c. 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 years next preceding successful completion of all conditions of probation, discharge from parole supervision, or expiration of sentence;

3.2.3.d. 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 years next preceding the filing date of the application;

3.2.3.e. 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. Is a person to whom alcoholic beverages may not be sold under the provisions of Chapter 60 of the West Virginia Code;

3.2.3.g. Has been adjudicated an incompetent;

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

3.2.3.i. Is violating or allowing the violation of any provision of Chapter 60 or Chapter 61 of the West Virginia Code or W. Va. Code §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. 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 rules of the Commissioner.

3.2.4.b. Is so located that violations of W. Va. Code §60-1-1 *et seq.*, or of the rules 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 by the applicant.

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

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

3.2.5. The Commissioner may refuse to issue a license if he or she has 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.

3.2.5.a. Any person applying for a license to operate a private club at any location within a municipality must file a notice of such intention using the zoning form provided by the Commissioner or available on the ABCA website at [www.abca.wv.gov](http://www.abca.wv.gov), with the clerk or recorder of the municipality at least 10 calendar days prior to filing an application for a private club license with the ABCA as required by W. Va. Code §60-7-4a.

3.2.5.b. Any person applying for a license to operate a private club that is not within a municipality, must submit a letter from the county commissioner stating that the location of the club is in compliance with zoning ordinances for that county.

3.2.6. In the process of determining whether or not a license should be issued, the Commissioner must investigate the accuracy of all allegations, that could lead to denial of the license. The Commissioner may request such other information as the Commissioner may reasonably require of the applicant and a manager which shall include, but not be limited to, all pecuniary or financial interest in the applicant and the criminal records, if any, of each member of the applicant's governing board or its officers and directors who have been convicted of a felony or a crime involving moral turpitude.

3.2.7. Upon receipt of a completed application, together with the accompanying fee and bond, the Commissioner shall conduct an investigation to determine the accuracy of the matters contained in such completed application and whether applicant is a bona fide private club of good reputation in the community in which it shall operate. For the purpose of conducting such investigation, the Commissioner may withhold the granting or refusal to grant the license for a period not to exceed 30 calendar days or until the applicant has completed the conditions set forth in the code, all as determined by the Commissioner. The Commissioner may issue a license authorizing the applicant to sell alcoholic liquors if it appears that the applicant is a bona fide private club of good reputation in the community in which it shall operate and that the applicant and the manager listed in the application or renewal application have not made any false statement, material misrepresentation, or omissions; have no hidden ownership or undisclosed pecuniary interests; and have complied with all applicable requirements in the West Virginia Code and Code of State Rules, which are all subject to investigation by the Commissioner and as determined by the Commissioner.

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

Type I. - This is for 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 pays no part of its income to shareholders or individual members, and 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 social organizations or corporations operated for legitimate purposes and for profit, that pays part of its income to shareholders or individual members, and 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.

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.

3.3.1. A private fair and festival is a temporary Type II license, and a private hotel, private resort hotel, private golf course and private nine-hole golf course are Type II licenses.

#### 3.4. Fees.

3.4.1. The annual fee for licenses issued under the provisions of W. Va. Code §60-7-1 *et seq.* shall be as follows:

3.4.1.a. For a fraternal or veterans organization or a nonprofit social club, \$750.00.

3.4.1.b. For a private club other than a private club of the type specified in subdivision 3.4.1.a. of this subsection, \$1,000.00 if determined by the Commissioner that such private club has less than 1,000 member and \$2,500.00 if such private club has 1,000 or more members. A private club licensee with 1,000 or more members may, in the Commissioner's discretion, operate Class B license for the off-premises sale of nonintoxicating beer and wine in a connected but separately operated area of the private club premises: *Provided*, That each business is licensed separately and operates separate cash registers and maintains separation barriers between the different licensed operations. Failure of a licensee to license two inner-connected businesses shall subject the licensee to the penalties under W.Va. Code §60-7-1 *et seq.* and this rule. The fee for any license issued following the first day of January of any year, to expire on the 30th day of June of each year, will be 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.

3.4.1.b.1. For a private hotel of the type specified in W. Va. Code §60-7-6(b), \$4,000.00.

3.4.1.b.2. For a private resort hotel of the type specified in W. Va. Code §60-7-6(b): with 5 or fewer designated areas, \$7,500.00; with at least 6 but no more than 10 designated areas, \$12,500.00; with at least 11 but no more than 15 designated areas, \$17,500.00; and with no fewer than 15 nor more than 20 designated areas, \$22,500.00.

3.4.1.b.3. For a private golf club of the type specified in W. Va. Code §60-7-6(b), \$4,000.00.

3.4.1.b.4. For a private nine-hole golf club of the type specified in W. Va. Code §60-7-6(b), \$2,000.00.

3.4.2. A private resort hotel having obtained a license and paid the \$22,500.00 annual license fee may, upon application to and approval of the Commissioner, designate additional areas for a period not to exceed seven calendar days for an additional fee of \$150.00 per day, per designated area.

3.4.3. A private fair and festival shall be designated a Class S2 private fair and festival license for the retail sale of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer for on-premises consumption at a temporary event and shall pay a nonrefundable nonprorated license fee of \$750.00.

3.4.4. Growler requirements. - A licensed private club who pays the \$100.00 fee set forth in W. Va. Code §11-16-6b and meets the requirements of this section may offer nonintoxicating beer or nonintoxicating craft beer for retail sale to patrons from their licensed premises in a growler for personal consumption only off of the licensed premises and not for resale.

3.4.4.a. Prior to a growler sale, the licensee shall verify, using proper identification, that any patron purchasing nonintoxicating beer or nonintoxicating craft beer is 21 years of age or over and that the patron is not visibly intoxicated.

3.4.4.b. A licensee may not sell, give or furnish alcoholic liquors, including wine, for consumption off of its licensed premises, unless it is a private club licensed to sell sealed wine for consumption off of the licensed premises and meets the requirements set forth in the W. Va. Code §60-8-1 *et seq.*, and in subsection 3.4.5., for the sale of wine, not liquor.

3.4.4.c. A licensee shall comply with all the retail sales, payment of taxes and fees, advertising, growler requirements, growler labeling, growler sanitation, sampling and limitations provisions of W. Va. Code §11-16-6b and shall be subject to all applicable requirements and penalties in W. Va. Code §11-16-1 *et seq.*

3.4.5. Wine bottle requirements. - A license to sell wine granted to a private club entitles the operator to sell and serve wine, for consumption on the premises of the licensee when the sale accompanies the serving of food or a meal (the serving of food or a meal occurs when the total food purchase, excluding beverage purchases, taxes, gratuity, or other fees is at least \$15.00:

3.4.5.a. A licensed private club for no additional license fee may permit a person over 21 years of age to purchase wine, consume wine, and recork or reseal, using a tamper resistant cork or seal, up to two separate bottles of unconsumed wine in conjunction with the serving of food or a meal to its members and their guests in accordance with the provisions of W. Va. Code §60-8-1 *et seq.* for the purpose of consumption of said wine off-premises;

3.4.5.b. A licensed private club who shall apply, pay a \$100.00 license fee, and is approved by the Commissioner may offer for sale, for consumption off the premises, sealed bottles of wine to its customers in conjunction with the serving of food or a meal: *Provided*, That no more than one bottle is sold per each person over 21 years of age, as verified by the private club, for consumption off the premises. Such licensees are authorized to keep and maintain on their premises a supply of wine in quantities appropriate for the conduct of operations thereof. Any sale of wine is subject to all restrictions set forth in W. Va. Code §60-8-20.

3.4.6. Liquor bottle service. - A private club licensed under W. Va. Code §60-7-1 *et seq.*, that is in good standing with the Commissioner may apply for the Commissioner's approval, and shall pay a \$1000.00 annual fee which is nonrefundable and non-prorated, to sell or serve liquor by the bottle to two or more persons for personal consumption, not for resale, on the licensed premises only in a designated area.

3.4.7. Operational fee. - All licensees shall pay, with their annual fee, an annual \$100.00 operational fee per licensed premises.

3.4.8. Reactivation fee. - A licensee that fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, after initial application, shall be charged an additional \$150.00 reactivation fee. The fee payment may not

be prorated or refunded. The reactivation fee must be paid prior to the processing of any renewal application and payment of the applicable full year annual license fee. A licensee who continues to operate upon the expiration of its license is subject to all fines, penalties, and sanctions available in W. Va. Code §60-7-13 and W.Va. Code §60-7-13a, all as determined by the Commissioner.

3.5. Bond. - No license will be issued until the applicant has executed a bond in the penal sum of \$5,000.00, payable to the State of West Virginia. The surety on the bond shall be executed by a corporate surety authorized to transact business in the State of West Virginia, which bond 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.* and this rule duly promulgated thereunder, and the same shall be done on Alcohol Beverage Control Commissioner's Form No. ABCA 193. Also required is a bond in the penal sum of \$1,000.00, payable to the State of West Virginia for the same surety as above for Nonintoxicating Beer Bond and will be submitted on Alcohol Beverage Control Commissioner's Form No. ABCA-194 Nonintoxicating Beer Bond.

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

3.7. License application form. - The application form for a license to sell alcoholic liquors by private clubs is available from the Commissioner or on the ABCA website at [www.abca.wv.gov](http://www.abca.wv.gov).

#### **§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 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 21 years. The licensee must require proof of age by way of at least one of three documents certifying the age of the individual, one form of proof shall be either a valid driver's license, commercial driver's license or Department of Motor Vehicles identification card showing that the holder is at least 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 21 years of age.

4.2.2. A valid West Virginia Commercial Driver's license (CDL) license showing that the holder is at least 21 years of age.

4.2.3. A West Virginia Department of Motor Vehicles identification card showing that the holder is at least 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 identification showing the

individual to be at least 21 years of age.

The failure to produce satisfactory proof of age upon demand entitles the licensee to refuse to sell alcoholic beverages to the individual.

4.3. Age of manager. - No licensee whose manager is under the age of 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 rules of the State of West Virginia are enforced. Upon the presentation of credentials the licensee will allow the Commissioner immediate 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 the inspection.

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

4.5. Posting license, door markers, and signage. - Each licensee shall post:

4.5.1. All licenses issued to the licensee pursuant to Chapter 60 of the West Virginia Code in a conspicuous area inside the licensed premises.

4.5.2. At, above, or on the licensee's main entrance to its private club in letters no higher than 6 inches, a statement "ABCC License No. \_\_\_\_\_" which lists the license's license number in the blank space.

4.5.3. In an open and prominent place a blood-alcohol chart in the form prescribed by W. Va. Code §60-6-24 as provided by the Commissioner.

4.5.4. In an open and prominent place the fetal alcohol syndrome warning of birth defects in the manner prescribed by W. Va. Code §60-6-25 in the form as provided by the Commissioner.

4.5.5. The human trafficking notice required by W. Va. Code §15A-2-5.

4.6. Licensee's purchases of alcoholic liquors. - After the granting of a private club license, each holder shall purchase alcoholic liquors for resale from a retail liquor outlet. A private club may purchase alcoholic liquors only from the retail liquor outlet in whose market zone it is located or from a retail liquor outlet located in a market zone that is contiguous to the market zone in which the private club is located. Upon a showing of good cause to the Commissioner, a private club will be authorized to purchase alcoholic liquors from any retail liquor outlet within the State. Whenever the ABCA continues to operate a retail liquor outlet in a market zone for which no retail liquor outlet license has been issued, all private clubs located in that same market zone are required to purchase all alcoholic liquors from such ABCA licensed retail liquor outlet.

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 3:00 a.m. and 10:00 a.m. on any Sunday: *Provided*, That alcohol sales may not begin until 1:00 p.m. in a county that has voted to forbid alcohol sales until that time, as provided in W. Va. Code §7-1-3ss; 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 3:00 a.m. and 7:00 a.m. on any weekday. A private resort hotel holding a license issued pursuant to W. Va. Code §60-7-1 *et seq.* may sell, tender, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on the licensed premises when also licensed under W. Va. Code §29-22A-1 *et seq.* and W. Va. Code §29-22C-1 *et seq.* or W. Va. Code §29-25-1 *et seq.* during hours of operation authorized by those provisions.

4.8. Hours of operation - The licensed premises of all private clubs shall be closed for operation and cleared of all persons, including employees, 30 minutes after the hours of sale of alcoholic liquors and nonintoxicating beer have expired. Licensed premises shall not be occupied by persons any sooner than 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 9:00 AM on any Sunday and alcohol liquor sales at 10:00 AM, except in counties that have voted to forbid alcohol sales until 1:00 p.m., as provided in W. Va. Code §7-1-3ss.

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 1/2 hour prior to the expiration of the hours for sale of alcoholic liquors and nonintoxicating beer as specified in Section 4.8 of this rule.

4.10. Doors. - 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. However, for legally demarcated deck or other outdoor (not enclosed, having no walls, roof or combination of walls and roof) area of a licensed private club in good standing with the State and the ABCA and that meets the requirements of section 2.18. of this rule, the Commissioner may approve, on a case-by-case basis, a limited exception for doors that access only the legally demarcated deck or other outdoor area to be open during the hours of 11 a.m. to midnight. All other doors of entrance and exit of a private club obtaining this privilege would still remain closed except for ingress and egress of patrons. Prior to any consideration of this open-door limited exception by the Commissioner, the county or municipality where the private club is located must have authorized this open door limited exception within an ordinance, zoning, or other written authorization by the governing body of a county or municipality. Any private club violating this section's requirements shall be subject to the penalties in the Code and rules and cancellation of this privilege, and further all private clubs operating under this open door limited exception shall be in compliance with all state, county, and local noise ordinances and all ordinances or requirements affecting the peace, good order, and quietude of the community. Further, the open-door limited exception may be cancelled for any private club that fails to stay in good standing with the State and ABCA or has other violations of the Code and the rules.

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 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 1/4 the number of seats in the private club at any one time.

4.11.2. A suitable kitchen shall contain equipment as follows, unless otherwise specified by the requirements for licensure:

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

4.11.2.b. One sink with hot and cold running water;

4.11.2.c. One cold storage unit or refrigerator at least 17 cubic feet in size; and

4.11.2.d. 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 1/4 the number of seats in the club.

4.11.4. A meal may consist of one 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 are acceptable or items which, by themselves, do not qualify as adequate are packaged potato chips and similar products; packaged crackers; packaged nuts; packaged desserts (fruit pies, cakes, cookies, etc.), and bar sausages and similar products. The key word in the definition of meals is fresh preparation.

4.11.5. Meals shall be available from opening of the club until closing. Limited menus will be acceptable after 10:00 PM. Cold sandwiches which can be prepared in advance and refrigerated for use after 10:00 PM 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 21 years, and no individual below the age of 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. - When a duly licensed private club purchases alcoholic liquors from a retail liquor store authorized by W. Va. Code §60-3-1 *et seq.*, money orders, certified checks, cashier's checks, traveler's checks, and cash are acceptable for payment of a purchase. In addition, 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); provided that such purchase(s) 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(s) clears and is honored by the bank upon which the check is drawn.

4.14.1.a. A duly licensed private club may, in addition to the method provided above, purchase by personal check if a line of credit issued by a duly organized national or State banking institution is posted in advance with the Commissioner: *Provided*, That such purchase(s) may not exceed the total of the posted line of credit and in this regard and purchases, insofar as the line of credit is concerned, shall be treated as cumulative until such time as the check or checks 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 the Commissioner shall notify the bonding company or bank issuing the line of credit and make demand for payment and they shall be charged a handling fee of \$50.00, such sum to be charged in addition to the amount shown due on the face of the subject check.

4.14.2. Credit by retail liquor stores to private clubs forbidden. - A retail liquor store is authorized to establish its policy of the instruments allowed to be utilized for payment of purchases by a duly licensed private club. 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.

4.15. Operation of a private fair and festival. - To be eligible for the license authorized by this subsection, the private fair and festival or other event shall:

4.15.1. Be sponsored, endorsed, acknowledged, or approved by the governing body or its designee of the county or municipality in which the private fair and festival or other event is located;

4.15.2. Make application, including a floor plan, age verification policies and sales policies, with the commission at least 15 calendar days pursuant to the private fair, festival, or other event;

4.15.3. Be approved by the Commissioner to operate the private fair, festival, or other event.

4.15.4. Be for a duration of no more than 10 consecutive calendar days: *Provided*, That no more than six licenses may be issued to the same person or entity in a calendar year.

4.15.5. Offer to sell, sell, and serve nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by this section, which must be purchased from licensed distributors that services the area in which the private fair and festival is held or from a resident brewer acting in a limited capacity as a distributor, all in accordance W. Va. Code §11-16-1 *et seq.*

4.15.6. Offer to sell, sell, and serve wine sold, furnished, tendered, or served pursuant to the license created by this section which must be purchased from a licensed wine distributor, winery, or farm winery in accordance with W. Va. Code §60-8-1 *et seq.*

4.15.7. Offer to sell, sell and serve liquor sold, furnished, tendered, or served pursuant to the license created by this section which must be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private fair or festival is occurring, all in accordance with W. Va. Code §60-3A-1 *et seq.* and W. Va. Code §60-7-1 *et seq.*

4.15.8. Utilize bona fide employees or volunteers to sell, furnish, tender, or serve the nonintoxicating beer, nonintoxicating craft beer, wine, or liquor.

4.15.9. Consider permitting licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, and liquor broker representatives to attend a private fair and festival and discuss their respective products but such representatives shall not engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer, nonintoxicating craft beer, wine, or liquor.

4.15.10. Be subject to all other provisions W. Va. Code §60-7-1 *et seq.* and the rules and orders of the Commissioner: *Provided*, That the Commissioner may by rule or order allow certain waivers or exceptions with respect to those provisions, rules, or orders as the circumstances of each private fair and festival require and has the right to revoke or suspend immediately any license issued under this section prior to any notice or hearing, notwithstanding W. Va. Code §60-7-13a: *Provided, however*, That under no circumstances may the provisions of W. Va. Code §60-7-12 be waived or an exception granted with respect thereto.

## **§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 premises:

5.1.1.a. Sell, offer for sale, tender, or serve any alcoholic liquors other than by the individual drink, or nonintoxicating beer other than from the original package or container, exceptions to liquor by the drink are in the following circumstances:

5.1.1.a.1. A private club who has: applied (on a form provided by the Commissioner), paid the bottle service fee, and been approved by the Commissioner, may sell or serve liquor by the bottle to two or more persons for consumption on the licensed premises only in a designated area, as required by the Commissioner, and any liquor bottle sold by such a private club shall be sold at retail for personal use, and not for resale, to a person for not less than 300% of the private club's cost, and no such liquor bottle shall be removed from the licensed premises by any person or the licensee.

5.1.1.a.2. A Class A licensee licensed under W. Va. Code §60-7-1 *et seq.* and W. Va. Code §60-8-1 *et seq.* may sell or serve wine by the bottle to two or more persons for consumption on the licensed premises only, unless such licensee has obtained a license or privilege authorizing off-premises wine bottle sales when patrons purchase food or a meal.

5.1.1.a.3. A private club who maintains a written record reflecting daily emptying, cleaning, and sanitizing of a frozen drink machine may sell, furnish, tender, or serve pre-mixed alcoholic liquor consisting of alcoholic liquors, nonalcoholic mixer, and ice that is not in the original container if the pre-mixed alcohol liquor is dispensed from the frozen drink machine: *Provided*, That such written records are readily available for inspection by the Commissioner and health inspectors.

5.1.1.a.4. A private club that has obtained a growler license is permitted to break the seal of the original container for the limited purpose of filling a growler or providing complimentary samples as provided in this section. Any unauthorized sale of nonintoxicating beer or nonintoxicating craft beer or any consumption not permitted on the licensee's licensed premises is also subject to penalties under W. Va. Code §11-16-1 *et seq.*

5.1.1.b. In so far as these activities are prohibited by law, authorize or permit any disturbance of the peace; or any obscene, lewd, immoral or improper entertainment, conduct or practice; gambling or any slot machine, multiple coin console machine, multiple coin console slot machine, or device in the nature of a slot machine: *Provided*, That various games, gaming, and wagering conducted by duly licensed persons of the West Virginia State Lottery Commission; charitable bingo games conducted by duly licensed charitable or public service organization (or its auxiliaries), pursuant to W. Va. Code §47-20-1 *et seq.*; and charitable raffle games conducted by a duly licensed charitable or public service

organization (or its auxiliaries), pursuant to W. Va. Code §47-21-1 *et seq.* are permissible on a licensee's licensed premises when operated in accordance with the West Virginia Code and Code of State Rules.

5.1.1.b.1. Guidelines for strippers entertainment, conduct, or practice.

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

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.

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.

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 must dress adequately by covering himself or herself prior to mingling among patrons and other employees.

5.1.1.c. 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 21 years, any person who is mentally incompetent, or any 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 W. Va. Code §60A-1-1 *et seq.*

5.1.1.d. Permit the consumption by, or serve, on the licensed premises, any alcoholic liquors or nonintoxicating beer, to any person under the age of 21 years.

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

5.1.1.f. Have a drive-through (including, but not limited to a window, pass through, garage, etc.) or sell or permit the sale of alcoholic liquors, including wine and nonintoxicating beer, through such a drive-through;

5.1.1.g. Sell, offer for sale, give away, facilitate the use of, or allow the use of carbon dioxide, cyclopropane, ethylene, helium, or nitrous oxide for purposes of human consumption except as authorized by the Commissioner.

5.1.1.h. Employ any person who is less than 18 years of age in a position where the primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating beer, wine, or alcoholic liquors to any person.

5.1.1.i. Employ any person who is between the ages of 18 and 21 who is not directly supervised by a person aged 21 or over in a position where the primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating beer, wine, or alcoholic liquors to any person.

5.1.1.j. Violate any reasonable rule of the Commissioner.

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

5.1.3. 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.

5.1.4. A licensee shall notify, in a timely manner, emergency medical services or law enforcement if a licensee knows, or has reason to know, of a life-threatening medical emergency occurring on the licensed premises. In addition to the grounds for revocation, suspension, or other sanction of a license set forth in this section, the Commissioner may, in his or her discretion, revoke, suspend, or otherwise sanction a licensee for failing to comply with the provisions of this subsection.

5.1.4.a. If a life-threatening medical emergency occurs on a licensee's private premises requiring notification of emergency medical services or law enforcement under W. Va. Code §60-7-13(d), the licensee shall notify the Commissioner within 48 hours of the emergency's occurrence.

5.1.4.b. As used in this section, a life-threatening medical emergency includes, but is not limited to, respiratory distress or cessation of breathing, severe chest pains, shock, uncontrolled bleeding, poisoning, prolonged unconsciousness, overdose, any complaint or observation which indicates significant head or spinal injury, and life-threatening physical injury caused by a crime of violence against the person on or emanating from the licensed premises.

5.2. Public nuisance. - If it is determined by law that any club which is licensed pursuant to W. Va. Code §60-7-1 *et seq.* and this rule constitutes a public nuisance to any church, school, hospital, public institution, or otherwise, then such license may be revoked or suspended, the same being at the sound discretion of the Commissioner, until such nuisance is abated.

5.3. Upon a determination by the Commissioner that a licensee has: (i) violated the provisions of W. Va. Code §11-16-1 *et seq.*, Chapter 60 of the West Virginia Code, or this rule; (ii) acted in such a way as would have precluded initial or renewal licensure; or (iii) violated any rule or order of the Commissioner, the Commissioner may impose any one or a combination of the following sanctions:

5.3.1. Revoke the licensee's license;

5.3.2. Suspend the licensee's license;

5.3.3. Place the licensee on probationary status for a period not to exceed 12 months; and

5.3.4. Impose a monetary penalty not to exceed \$1,000 for each violation, where revocation is not imposed.

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

6.1. Order refusing license, suspending or revoking same. - If the 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 the order to the licensee, or serve it 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 adversely affected by an order of the Commissioner shall have the right to a hearing before the Commissioner or a person designated by him or

her as hearing examiner. A petition in writing requesting a hearing must be served upon the Commissioner within 10 calendar days following the receipt of the order by the applicant or licensee.

6.3. Petition requirements. - The petition for a hearing shall be in writing. An original and one 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 that the petitioner alleges to have been committed by the Commissioner in the determination of a licensee's violation or denial of application for license, 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  
900 Pennsylvania Avenue, 4<sup>th</sup> Floor  
Charleston, WV 25302

(For Commission Use Only)

Docket No. \_\_\_\_\_  
Date of Order of Suspension or Revocation  
or Denial of Application for License:  
Whether Suspension or Revocation  
or Denial of Application for License

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 or Denial of Application for 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 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 \_\_\_\_\_, 20 \_\_\_\_ at \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

Notary Public

6.5. Hearings. - Cost deposit. - The person demanding a hearing shall give security for the cost of the hearing in the amount of \$300.00. The cost deposit 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.* and this 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 calendar days before the return date thereof, either by personal service made by any person 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 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 W. Va. Code §55-1-1 *et seq.*

6.6.3. All such fees shall be paid by the 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 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 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 W. Va. Code §60-7-4 in full force and effect.

6.7.2. A suspension or revocation order issued pursuant to Section 4.2. of this rule, and

6.7.3. A suspension order suspending a license in the interest of public safety, as specified in W. Va. Code §60-7-13a.

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

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 a hearing 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 or 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 may accept briefs in lieu of argument. Briefs must be filed within 10 calendar days after receipt of the record of the hearing or as otherwise specified by the Commissioner or the designated hearing examiner, or as otherwise agreed to by the parties.

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

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.* and this rule.

6.16. Commissioner's decision. - After the conclusion of the hearing or within 10 calendar days of receipt of the transcript, 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 10 calendar days of receipt of the recommended decision, shall either accept or reject the recommended decision. If he or she accepts the 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. If he or she rejects the decision, he or she shall, within 10 calendar days of receipt of the 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. A copy of the order shall be served upon each party to the hearing and 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 as specified W. Va. Code §60-7-13a, if filed within 30 calendar days after the charge upon which the party received notice of the final order of the Commissioner.