



WEST VIRGINIA

ALCOHOL BEVERAGE CONTROL ADMINISTRATION

FREDRIC L. WOOTON, COMMISSIONER

August 27, 2021

VIA EMAIL to: mlewis@wvsos.com and dkersey@wvsos.com

Mac Warner, The Honorable Secretary of State,
Secretary of State's Office – Administrative Law
Bldg. 1, Suite 157-K
1900 Kanawha Blvd. East
Charleston, WV 25305-0770

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

2021 AUG 27 A 10:01

FILED

Re: West Virginia Code of State Rules
– Administrative Notice for 175 CSR 2 §5.1.1.f.

Dear Secretary of State Warner:

The Honorable Governor of the State of West Virginia, Jim Justice, has declared a State of Emergency on March 16, 2020, to address the emergency created by the worldwide COVID-19 pandemic, or more commonly known as the novel coronavirus.

As declared in the State of Emergency Proclamation, the Governor, in accordance with emergency powers granted to the Governor pursuant to W. Va. Code §15-5-6, and more specifically §15-5-6(c)(7), and as also stated in Executive Order No. 2-20 issued on March 18, 2020,

“I hereby **DELEGATE** to all state agencies the ability to suspend rules, if strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency”

The West Virginia Alcohol Beverage Control Administration (WVABCA) at the direction of the Governor seeks to temporarily suspend part of the private club operations rule that would prohibit a private club restaurant from utilizing a drive-through window for the sale of food, beverages and sealed alcoholic beverages, when licensed for such sealed alcoholic beverage sales.

Based on the above conditions arising from COVID-19 and in the best interest of the public health, safety and welfare of West Virginia citizens, the Governor, per the State of Emergency and Executive Order 2-20, directed the WVABCA to temporarily suspend the West Virginia Code of State Rules at 175 CSR 2, specifically §5.1.1.f., in part, by editing the rule and adding an exception for a private club restaurant at the end of the existing sentence in 175 CSR 2, §5.1.1.f., after the word drive-through, and stating that: (see underscored new language)

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

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,

“except that a private club restaurant may request to operate a drive-through window upon submitting a written request for approval of the drive-through window that is

located on the applicant's or licensee's licensed premises. Upon the Commissioner's approval, the private club restaurant applicant or licensee shall be permitted to sell and serve food, and non-alcoholic beverages or alcoholic beverages, consisting of: (1) sealed nonintoxicating beer bottles or cans, and when licensed for nonintoxicating beer growlers, sell and serve sealed nonintoxicating beer growlers, all with a food order; (2) sealed hard cider or wine bottles or cans, and when licensed for hard cider or wine growlers, sell and serve sealed hard cider or wine growlers, all with a food order; and (3) when licensed for craft cocktail growlers, then the sell and serve craft cocktail growlers with food or a meal. A private club bar is not permitted to have a drive-through window."

The temporary suspension of the drive-through prohibition in this rule, as noted herein, shall be effective August 27, 2021, and shall endure for the remainder of the State of Emergency, or until the rule suspension is lifted by the WVABCA.

For the term "private club restaurant" please review HB 2025 passed during the 2021 Regular Legislative Session and effective May 10, 2021 or go to this link <https://abca.wv.gov/Documents/HB2025%20SUB%20ENR.pdf>.

If you have any further questions, please feel free to contact the WVABCA at 304-356-5500 or toll free at 800-642-8202, or via email at the appropriate contact noted on the WVABCA's website (www.abca.wv.gov).

Sincerely,



Fredric L. Wooton
Commissioner