

Chapter 5A.
ALCOHOLIC BEVERAGES

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Article 1. General Provisions.

For the State Liquor Control Act, see WV Code, Chapter 60. For State Non intoxicating Beer Act, see WV Code, Chapter 11, art. 16.

Section 5A-1-1. Definitions.

For the purposes of this chapter:

“Alcohol” shall mean ethyl alcohol whatever its origin and shall include synthetic ethyl alcohol but not denatured alcohol.

“Beer” shall mean 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.

“Nonintoxicating beer” shall mean any beverage, obtained by the fermentation of barley, malt, hops, or similar products or substitute and containing not more alcohol than that specified by WV Code 11-16-2.

“Wine” shall mean any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar.

“Spirits” shall mean any alcoholic beverage obtained by distillation and mixed with potable water and other substances in solution, and includes brandy, rum, whiskey, cordials and gin.

“Alcoholic liquor” shall include alcohol, beer, wine and spirits, and any liquid or solid capable of being used as a beverage, but shall not include nonintoxicating beer.

“Original package” shall mean any closed or sealed container or receptacle used for holding alcoholic liquor.

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

“Selling” shall include solicitation or receipt of orders; possession for sale; and possession with intent to sell.

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“Person” shall mean an individual, firm, partnership, limited partnership, corporation or voluntary association.

“Manufacture” means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor.

“Manufacturer” shall mean any person engaged in the manufacture of any alcoholic liquor, and among others includes a distiller, a rectifier, a wine maker and a brewer.

“Brewery” shall mean an establishment where beer is manufactured or in any way prepared.

“Winery” shall mean an establishment where wine is manufactured or in any way prepared.

“Distillery” shall mean an establishment where alcoholic liquor other than wine or beer is manufactured or in any way prepared.

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

“State liquor store” shall mean a store established and operated by the Commission under this chapter for the sale of alcoholic liquor in the original package for consumption off the premises.

“An agency” shall mean a drugstore, grocery store or general store designated by the Commission as a retail distributor of alcoholic liquor for the West Virginia Alcohol Beverage Control Commissioner.

“Department” shall mean the organization through which the Commission exercises powers imposed upon it by this chapter.

“Commissioner” or “Commission” shall mean the West Virginia Alcohol Beverage Control Commissioner.

“Intoxicated” shall mean having one’s faculties impaired by alcohol or other drugs to the point where physical or mental control or both are markedly diminished.

For State Law basis of this section, see WV Code § 60-1-5.

Section 5A-1-2. Applicability of chapter to nonintoxicating beer.

The provisions of this chapter do not apply to nonintoxicating beer except as is otherwise specifically provided.

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For State Law basis of this section, see WV Code § 60-1-7.

Article 2. Sales by Commissioner.

Section 5A-2-1. Tax on purchases of intoxicating liquors outside corporate limits of municipalities.

Pursuant to Chapter 8, Article 13, Section 7 of the Code of West Virginia, as amended, there is hereby imposed a tax of five percent (5%) of the retail purchase price of any and all intoxicating liquors purchased from the Alcohol Beverage Control Commission or from any store or outlet authorized by ABCC or from any person licensed to sell wine at retail to the public under the provision of Chapter 60, Article 8 of the aforesaid Code of West Virginia, within the corporate boundaries or within one mile of the corporate boundaries of the City. Such tax shall be levied upon the purchaser of said intoxicating liquor or wine, and shall be added to any collected with the retail purchase price of such intoxicating liquor or wine. Such tax shall be received by the municipality from the State Treasury pursuant to the rules and regulations adopted by the Alcohol Beverage Control Commission. Provided, however, that such tax shall not be collected on intoxicating liquors, other than wine, sold by or purchased from holders of a license issued under the provisions of Chapter 60, Article 7 of said West Virginia Code. Provided further, such tax shall be collected upon all sales of wine to holders of a license issued under the provisions of Chapter 60, Article 7 of said West Virginia Code from a wine distributor licensed pursuant to the provisions of Chapter 60, Article 3 et seq of said West Virginia Code.

A certified copy of the Ordinance from which this section derives has been provided to the State alcohol beverage control commissioner, as required by WV Code, §6-13-7, which further provides that the City tax shall be added to and collected with the purchase price.

For State Law basis of this section, see WV Code §60-3-9d and §60-3A-21.

Section 5A-2-5. Sales to certain persons prohibited.

- (a) Alcoholic liquors and nonintoxicating beer as defined WV Code 11-16-3 shall not be sold to a person who is:
 - (1) Less than twenty-one years of age;
 - (2) An habitual drunkard;
 - (3) Intoxicated;
 - (4) Addicted to the use of any controlled substance as defined by any of the provisions of WV Code 60A-1-101; or
 - (5) Mentally incompetent.

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- (b) It shall be a defense to a violation of subdivision (1), subsection (a) of this section if the seller shows that the purchaser:
 - (1) Produced written evidence which showed his or her age to be at least the required age for purchase and which bore a physical description of the person named on the writing which reasonably described the purchaser; or
 - (2) Produced evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.

For State Law basis of this section, see WV Code § 60-3-22.

Section 5A-2-6. Unlawful acts by person.

- (a) Any person under the age of twenty-one years who, for the purpose of purchasing alcoholic liquors from a state liquor store or an agency, misrepresents his or her age, or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own, or who illegally attempts to purchase alcoholic liquors from a state liquor store or an agency, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed fifty dollars or shall be imprisoned in the county jail for a period not to exceed seventy-two hours, or both such fine and imprisonment, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year.
- (b) Any person who shall knowingly buy for, give to or furnish to anyone under the age of twenty-one to whom they are not related by blood or marriage, any alcoholic liquors from whatever source, is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars or shall be imprisoned in the county jail for a period not to exceed ten days, or both such fine and imprisonment.

For State Law basis of this section, see WV Code § 60-3-22a.

Article 3. Sales by Retail Liquor Licensees.

Section 5A-3-1. Definitions.

- (a) “Applicant” means any person who bids for a retail license, or who seeks the Commissioner’s approval to purchase or otherwise acquire a retail license from a retail licensee, in accordance with the provisions of this article.
- (b) “Application” means the form prescribed by the Commissioner which must be filed with the Commissioner by any person bidding for a retail license.
- (c) “Board” means the Retail Liquor Licensing Board created by this article.

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- (d) “Class A retail license” means a retail license permitting the retail sale of liquor at more than one retail outlet.
- (e) “Class B retail license” means a retail license permitting the sale of liquor at only one retail outlet.
- (f) “Current licensee” means a person who holds a retail license at the time of the reenactment of this section in the year one thousand nine hundred ninety-nine or that person’s successor or any person who holds a retail license when it expires at the end of a ten-year period.
- (g) “Designated areas” means one or more geographic areas within a market zone designated as such by the Board.
- (h) “Executive officer” means the president or other principal officer, partner or member of an applicant or retail licensee, any vice president or other principal officer, partner or member of an applicant or retail licensee in charge of a principal business unit or division, or any other officer, partner or member of an applicant or retail licensee who performs a policy-making function.
- (i) “Liquor” means alcoholic liquor as defined in section 5A-1-3 of this chapter, and also includes both wine and fortified wines as those terms are defined in WV Code 60-8-2.
- (j) “Market zone” means a geographic area designated as such by the board for the purpose of issuing retail licenses.
- (k) “Person” means an individual, firm, corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature.
- (l) “Retail license” means a license issued under the provisions of this article permitting the sale of liquor at retail.
- (m) “Retail licensee” means the holder of a retail license.
- (n) “Retail outlet” means a specific location where liquor may be lawfully sold by a retail licensee under the provisions of this article.

For State Law basis of this section, see WV Code §60-3A-4.

Section 5A-3-2. Unlawful Acts by Person.

- (a) (1) Any person who is eighteen or over but under the age of twenty-one years who purchases, consumes, sells, serves or possesses alcoholic liquor is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed five hundred dollars or shall be incarcerated in jail

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for a period not to exceed seventy-two hours, or both fined and imprisoned or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year. Any person who is under eighteen years who purchases, consumes, sells, serves or possesses alcoholic liquor is guilty of a status offense, as that term is defined in WV Code 49-1-4 and, upon adjudication therefor, shall be referred to the Department of Health and Human Resources for services, as provided in WV Code 49-5-11.

- (2) Nothing in this article, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of a licensee which includes the sale and serving of alcoholic liquor.
 - (3) Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing alcoholic liquor when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local Law-Enforcement Agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Commissioner.
- (b) Any person under the age of twenty-one years who, for the purpose of purchasing liquor from a retail licensee, misrepresents his or her age or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own or who illegally attempts to purchase liquor from a retail licensee is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed fifty dollars or imprisoned in jail for a period not to exceed seventy-two hours, or both fined and imprisoned or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year.
 - (c) Any person who knowingly buys for, gives to or furnishes to anyone under the age of twenty-one to whom he or she is not related by blood or marriage any liquor from whatever source is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed one hundred dollars or imprisoned in jail for a period not to exceed ten days, or both fined and imprisoned.
 - (d) No person while on the premises of a retail outlet may consume liquor or break the seal on any package or bottle of liquor. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed one hundred dollars or imprisoned in jail for a period not to exceed ten days, or both fined and imprisoned.

For State Law basis of this section, see WV Code § 60-3A-24.

Article 4. Miscellaneous Provisions.

Section 5A-4-1. When lawful to possess, use or serve alcoholic liquors.

The provisions of this chapter may not prevent:

- (a) A person from keeping and possessing alcoholic liquors in his or her residence for the personal use of himself or herself, his or her family, his or her employee or his or her guests if the alcoholic liquors have been lawfully acquired by him or her;
- (b) A person, his or her family, or employee from giving or serving such alcoholic liquors to guests in the residence, when the gift or service is not for the purpose of evading the provisions of this chapter;
- (c) The holder of a farm winery license from serving complimentary samples of its wine in moderate quantities for tasting at the winery premises; and
- (d) The holder of a mini-distillery license from serving complimentary samples of its alcoholic liquor in moderate quantities for tasting at the distillery.

For State Law basis of this section, see WV Code §60-6-1.

Section 5A-4-2. Unlawful sale or possession by a licensee.

A person licensed under the provisions of this chapter shall not:

- (a) Sell alcoholic liquors of a kind other than that which such license or this chapter authorizes him to sell.
- (b) Sell beer to which wine, spirits or alcohol has been added.
- (c) Sell wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture thereof under regulation of the State liquor control commission.
- (d) Sell alcoholic liquors to a person specified in section 5A-2-5 of this chapter.
- (e) Sell alcoholic liquors except as authorized by his license.
- (f) Sell any alcoholic liquor when forbidden by the provisions of this chapter.
- (g) Keep on the premises covered by his license alcoholic liquor other than that which he is authorized to sell by such license or by this chapter.

A person who violates any provision of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty nor more than five hundred dollars.

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For corresponding provisions of State Law and penalties for violation, see WV Code, §60-6-8.

Section 5A-4-3. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by police officers for violation in their presence; penalties.

- (a) A person shall not:
 - (1) Appear in a public place in an intoxicated condition;
 - (2) Drink alcoholic liquor in a public place;
 - (3) Drink alcoholic liquor in a motor vehicle on any highway, street, alley or in a public garage;
 - (4) Tender a drink of alcoholic liquor to another person in a public place;
 - (5) Possess alcoholic liquor in the amount in excess of ten gallons, in containers not bearing stamps or seals of the Commissioner, without having first obtained written authority from the said Commissioner therefor; or
 - (6) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of this chapter.

- (b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his or her presence, violates subdivision (1) of subsection (a) of this section:
 - (1) If there is some nonintoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying a date for appearance before a judicial officer and release him or her to the custody of the individual accepting responsibility: Provided, That the issuance of a citation shall be used whenever feasible;
 - (2) if it does not impose an undue burden on the officer, he or she may, after issuance of such a citation, transport the individual to the individual's present residence or arrange for such transportation;
 - (3) if the individual is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection are not possible, the officer shall transport or arrange for transportation to the appropriate judicial officer as defined by WV Code 27-11-17; or
 - (4) if the individual is incapacitated and, in the law-enforcement officer's judgment, is in need of acute medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency room. The officer shall accompany the individual until he or she is discharged from the emergency room or admitted to the hospital. If the individual is released from the emergency room, the officer

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may proceed as described in subdivisions (1), (2) and (3) of this subsection. If the individual is admitted to the hospital, the officer shall issue a citation to the individual specifying a date for appearance before a judicial officer.

- (c) Upon presentment before the proper judicial officer, the law-enforcement officer shall serve as the chief complaining witness. The judicial officer must make a finding that there is probative evidence that the individual may be guilty of the charge of public intoxication. If such evidence is not presented, the charge shall be dismissed and the individual released. If sufficient evidence is presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the individual. Once a warrant or summons has been issued, the following actions may be taken: (1) If the individual is no longer incapacitated, he or she may be released; (2) if the individual is still incapacitated but a nonintoxicated person is available to accept responsibility for him or her, he or she may be released to the responsible person; or (3) if the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under the provisions of WV Code 27-5-1 or 27-6A-1.
- (d) Any law-enforcement officer is hereby authorized and empowered to arrest and hold in custody, without a warrant, until complaint may be made before a judicial officer and a warrant or summons issued, any person who in the presence of the law-enforcement officer violates any one or more of subdivisions (1) through (6), subsection (a) of this section: Provided, That the law-enforcement officer may use reasonable force to prevent harm to himself or herself, the individual arrested or others in carrying out the provisions of this section.
- (e) Any person who violates subdivision (1), subsection (a) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced by a judicial officer in accordance with the following options: (1) Upon first offense, a fine of not less than five dollars nor more than one hundred dollars. If the individual, prior to conviction, agrees to voluntarily attend an alcohol education program of not more than six hours duration at the nearest community mental health — mental retardation center, the judicial officer may delay sentencing until the program is completed and upon completion may dismiss the charges; (2) upon conviction for a second offense, a fine of not less than five dollars nor more than one hundred dollars and not more than thirty days in the regional jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health —

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mental retardation center; (3) upon third and subsequent convictions, a fine of not less than five dollars nor more than one hundred dollars and not less than five nor more than thirty days in regional jail or a fine of not less than five dollars nor more than one hundred dollars and completion of not less than five hours of alcoholism counseling at the nearest community mental health — mental retardation center: Provided, That three convictions for public intoxication within the preceding six months shall be considered evidence of alcoholism: Provided, however, That for the educational counseling programs described in this subsection the community mental health — mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to complete the prescribed program for each individual.

- (f) A person charged with a violation of subdivision (1), subsection (a) of this section who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to WV Code 27-5-1 and 27-6A-1.
- (g) Any person who violates subdivision (2), subsection (a) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five nor more than one hundred dollars; and upon a second or subsequent conviction thereof, shall be fined not less than five nor more than one hundred dollars, or confined in the regional jail not more than thirty days, or both.
- (h) Any person who violates subdivision (3), subsection (a) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five nor more than one hundred dollars, or confined in the regional jail not more than thirty days, or both.
- (i) Any person who violates subdivision (4) or (5), subsection (a) of this section shall be guilty of a misdemeanor and, upon his or her first conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars.

For corresponding State Law and penalties for violation, see WV Code, §60-6-9.

Section 5A-4-4. Penalties for violations not otherwise specified.

A person who violates any order, rule or regulation of the Commission [Commissioner] made under the authority of this chapter, or who violates any provision of this chapter for which punishment has not been specifically provided, shall be guilty of a misdemeanor and upon conviction shall be fined not less than ten nor more than five hundred dollars or confined in jail not less than five days nor more than thirty days, or by both such fine and imprisonment.

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If, by the provisions of this chapter, conflicting penalties are prescribed for an offense, the section providing for the heavier penalty shall control.

For corresponding State Law and penalties for violation, see WV Code, §60-6-15.

Section 5A-4-5. Places deemed common and public nuisances; abatement; conspiracy.

A place where alcoholic liquor is manufactured, sold, stored, possessed, given away, or furnished contrary to law shall be deemed a common and public nuisance. Boats, cars (including railroad and traction passenger cars operating in this State), automobiles, wagons, water and aircraft, beasts of burden, or vehicles of any kind shall be deemed places within the meaning of this section and may be proceeded against under the provisions of WV Code 60-6-17. A person who shall maintain, or shall aid or abet or knowingly be associated with others in maintaining such common and public nuisance shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred nor more than five hundred dollars, and judgment shall be given that such nuisance be abated or closed as a place for the manufacture, sale, storage, possession, giving away, or furnishing contrary to law of alcoholic liquor, as the court may determine.

If two or more persons conspire to maintain such common and public nuisance or to distill, manufacture, store, transport, sell, give away, or furnish alcoholic liquor in violation of any of the provisions of this chapter, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars.

For corresponding State Law and penalties for violation, see WV Code, §60-6-16.

Article 5. Licenses to Private Clubs.

Section 5A-5-1. Definitions; power to lease building for establishment of private club.

Unless the context in which used clearly requires a different meaning, as used in this article:

- (a) “Private club” means any corporation or unincorporated association which either (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) 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

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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 (3) is organized and operated for legitimate purposes, which has at least one hundred 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 (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.

- (b) “Licensee” means the holder of a license to operate a private club granted under the provisions of this article, which license shall remain unexpired, unsuspended and unrevoked.
- (c) “Applicant” means a private club applying for a license under the provisions of this article.
- (d) “Commissioner” means the West Virginia Alcohol Beverage Control Commissioner.
- (e) “Code” means the official Code of West Virginia, one thousand nine hundred thirty-one, as amended.

The Department [Division] of Natural Resources, the authority governing any county or municipal park, or any county commission, municipality, other governmental entity, public corporation or public authority operating any park or airport shall have plenary power and authority to lease as lessor a building or portion thereof or other limited premises in any such park or airport to any corporation or unincorporated association for the establishment of a private club pursuant to the provisions of this article.

For corresponding State Law and penalties for violation, see WV Code, §60-7-2.

Section 5A-5-2. Sale of alcoholic liquors and nonintoxicating beer by licensee authorized.

Notwithstanding any other provisions of this code to the contrary, licensees are hereby authorized to sell alcoholic liquors, other than in sealed packages, for consumption on the premises of the licensees, to their members and their guests in accordance with the provisions of this article. The licensees may keep and maintain on their premises a supply of those alcoholic liquors in such quantities as may be appropriate for the conduct of operations thereof.

For corresponding State Law and penalties for violation, see WV Code, §60-7-3.

Section 5A-5-3. Certain acts of licensee prohibited; criminal penalties.

- (a) It is unlawful for any licensee, or agent, employee or member thereof, on such licensee's premises to:
 - (1) Sell or offer for sale any alcoholic liquors other than from the original package or container;
 - (2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice, gambling or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine;
 - (3) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine or alcoholic liquors on the licensee's premises, by any person less than twenty-one years of age;
 - (4) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;
 - (5) Sell, give or dispense nonintoxicating beer, wine or alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of three o'clock a.m. and one o'clock p.m. on any Sunday;
 - (6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine or alcoholic liquors, covered by this article, to any person who is less than twenty-one years of age;
 - (7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;

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- (8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues paying member in good standing of said private club or a guest of such member;
 - (9) 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;
 - (10) (A) Employ any person who is less than eighteen years of age in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person;

(B) Employ any person who is between the ages of eighteen and twenty-one who is not directly supervised by a person aged twenty-one or over in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person; or
 - (11) Violate any reasonable rule of the Commissioner.
- (b) It is unlawful for any licensee to advertise in any news media or other means, outside of the licensee's premises, the fact that alcoholic liquors may be purchased thereat.
 - (c) Any person who violates any of the foregoing provisions is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars, or imprisoned in the county jail for a period not to exceed thirty days, or both fined and imprisoned.

For corresponding State Law and penalties for violation, see WV Code, §60-7-12.

Section 5A-5-4. Unlawful acts by persons.

- (a) A person under the age of twenty-one years may not order, pay for, share the cost of or attempt to purchase any nonintoxicating beer, wine or alcoholic liquors from a licensee or consume any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee or possess any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee. Any person under the age of twenty-one years who violates any provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars or imprisoned in the regional jail for a period not to exceed seventy-two hours, or both, and, in addition to such fine and imprisonment, may, for the first offense, be placed on probation for a period not to exceed one year: Provided, That nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing nonintoxicating beer, wine or alcoholic liquors when he or she is acting upon the request of or under the

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direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Commissioner.

- (b) Any person under the age of twenty-one years who, for the purpose of purchasing nonintoxicating beer, wine, or alcoholic liquors from a licensee, misrepresents his or her age, or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own, or who illegally attempts to purchase nonintoxicating beer, wine, or alcoholic liquors from a licensee, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars or shall be imprisoned in the regional jail for a period not to exceed seventy-two hours, or both, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year.
- (c) Any person who knowingly buys for, gives to or furnishes to anyone under the age of twenty-one, any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee, is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than five hundred dollars, or imprisoned in the regional jail not more than ten days, or both.

For corresponding State Law and penalties for violation, see WV Code, §60-7-12a.

Article 6. Nonintoxicating Beer.

For State Non intoxicating Beer Act, see WV Code, Chapter 11, article 16.

Section 5A-6-1. Definitions.

For the purpose of this article, except where the context clearly requires differently:

- (1) "Brewer" or "manufacturer" shall mean any person, firm, association, partnership or corporation manufacturing, brewing, mixing, concocting, blending, bottling or otherwise producing or importing or transshipping from a foreign country nonintoxicating beer for sale at wholesale to any licensed distributor.
- (2) "Brewpub" shall mean a place of manufacture of nonintoxicating beer owned by a resident brewer, subject to federal regulations and guidelines, a portion of which premises are designated for retail sales.
- (3) "Commissioner" shall mean the West Virginia alcohol beverage control commissioner.
- (4) "Distributor" shall mean and include any person jobbing or distributing nonintoxicating beer to retailers at wholesale and whose warehouse and chief

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place of business shall be within this state.

- (5) "Nonintoxicating beer" shall mean all cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and containing at least one half of one percent alcohol by volume, but not more than four and two-tenths percent of alcohol by weight, or six percent by volume, whichever is greater, all of which are hereby declared to be nonintoxicating and the word "liquor" as used in chapter sixty of this code shall not be construed to include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.
- (6) "Original container" shall mean the container used by the brewer at the place of manufacturing, bottling or otherwise producing nonintoxicating beer for sale at wholesale.
- (7) "Person" shall mean and include an individual, firm, partnership, limited partnership, association or corporation.
- (8) "Resident brewer" shall mean any person, firm, association, partnership, or corporation whose principal place of business is within the state.
- (9) "Retailer" shall mean any person selling, serving, or otherwise dispensing nonintoxicating beer and all products regulated by this article, including, but not limited to, any malt cooler, at his established and licensed place of business.

For State Law basis of this section, see WV Code §11-16-3.

Section 5A-6-2. Unlawful acts of licensees; criminal penalties.

- (a) It shall be unlawful:
 - (1) For any licensee, his, her, its or their servants, agents or employees to sell, give or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected therewith, nonintoxicating beer or cooler on weekdays between the hours of two o'clock a.m. and seven o'clock a.m., or between the hours of two o'clock a.m. and one o'clock p.m., on any Sunday, except in private clubs licensed under the provisions of WV Code 61-7 et. seq., where the hours shall conform with the hours of sale of alcoholic liquors;
 - (2) For any licensee, his, her, its or their servants, agents or employees to sell, furnish or give any nonintoxicating beer as defined in this article to any person visibly or noticeably intoxicated or to any person known to be insane or known to be a habitual drunkard;

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- (3) For any licensee, his, her, its or their servants, agents or employees to sell, furnish or give any nonintoxicating beer as defined in this article to any person who is less than twenty-one years of age;
- (4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for the containers when title is retained by the vendor: *Provided*, That a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor must initiate the transfer no later than noon of one business day after the delivery;
- (5) For any brewer or distributor or brewpub or his, her, its or their agents to transport or deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;
- (6) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein contained shall prohibit a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any events: *Provided, however*, That no event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the commissioner;
- (7) For any licensee to permit in his or her premises any lewd, immoral or improper entertainment, conduct or practice;
- (8) For any licensee except the holder of a license to operate a private club issued under the provisions of WV Code 61-7-8 or a holder of a license or a private wine restaurant issued under the provisions of said chapter to possess a federal license, tax receipt or other permit entitling, authorizing or allowing the licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;

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- (9) For any licensee to obstruct the view of the interior of his or her premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying the premises. The interior of all licensed premises shall be adequately lighted at all times: *Provided*, That provisions of this subdivision do not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of article seven, chapter sixty of this code or the premises of a private wine restaurant licensed under the provisions of article eight of said chapter;
- (10) For any licensee to manufacture, import, sell, trade, barter, possess or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by a license or on premises directly or indirectly used in connection therewith: *Provided*, That the prohibition contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors is not applicable with respect to the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of article eight of said chapter insofar as the private wine restaurant is authorized to serve wine;
- (11) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased or acquired from any source other than a distributor, brewer or manufacturer licensed under the laws of this state;
- (12) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his or her premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community wherein the business is located: *Provided*, That no licensee may have in connection with his or her place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind;
- (13) For any person whose license has been revoked, as provided in this article, to obtain employment with any retailer within the period of one year from the date of the revocation, or for any retailer to knowingly employ that person within the specified time;
- (14) For any distributor to sell, possess for sale, transport or distribute nonintoxicating beer except in the original container;
- (15) For any licensee to knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state;

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- (16) For any Class B retailer to permit the consumption of nonintoxicating beer upon his or her licensed premises;
 - (17) For any Class A licensee, his, her, its or their servants, agents or employees, or for any licensee by or through any servants, agents or employees, to allow, suffer or permit any person less than eighteen years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision do not apply where a person under the age of eighteen years is in or upon the premises in the immediate company of his or her parent or parents, or where and while a person under the age of eighteen years is in or upon the premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on the premises;
 - (18) For any distributor to sell, offer for sale, distribute or deliver any nonintoxicating beer outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating beer or to sell, offer for sale, distribute or deliver nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of such nonintoxicating beer: *Provided*, That nothing herein is considered to prohibit sales of convenience between distributors licensed in this state wherein one distributor sells, transfers or delivers to another distributor a particular brand or brands for sale at wholesale; and
 - (19) For any licensee or any agent, servant or employee of any licensee to knowingly violate any rule lawfully promulgated by the commissioner in accordance with the provisions of chapter twenty-nine-a of this code.
- (b) Any person who violates any provision of this article including, but not limited to, any provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful is guilty of a misdemeanor and, upon conviction thereof, shall be punished for each offense by a fine of not less than twenty-five nor more than five hundred dollars. Magistrates shall have concurrent jurisdiction with the circuit court and any other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising under this article.
- (c) (1) A Class B licensee that:
- (A) Has installed a transaction scan device on its licensed premises; and

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- (B) Can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is sold, furnished or given away by the use of the transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner; or (iii) any civil liability whatsoever for the improper sale, furnishing or giving away of nonintoxicating beer to an individual who is less than twenty-one years of age by one of his or her employees, servants or agents. Any agent, servant or employee who has improperly sold, furnished or given away nonintoxicating beer to an individual less than twenty-one years of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant or employee who has improperly sold, furnished or given away nonintoxicating beer to an individual less than twenty-one years of age is subject to termination from employment, and the employer shall have no civil liability for the termination.
- (2) For purposes of this section, a Class B licensee can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is sold by providing evidence: (A) That it has developed a written policy which requires each employee, servant or agent to verify the age of each individual to whom nonintoxicating beer will be sold, furnished or given away; (B) that it has communicated this policy to each employee, servant or agent; and (C) that it monitors the actions of its employees, servants or agents regarding the sale, furnishing or giving away of nonintoxicating beer and that it has taken corrective action for any discovered noncompliance with this policy.
- (3) "Transaction scan" means the process by which a person checks, by means of a transaction scan device, the age and identity of the cardholder, and "transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver's license or other governmental identity card.
- (d) Nothing in this article nor any rule or regulation of the commissioner shall prevent or be considered to prohibit any licensee from employing any person who is at least eighteen years of age to serve in the licensee's lawful employ, including the sale or delivery of nonintoxicating beer as defined in this article. With the prior approval of the commissioner, a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age: *Provided*, That the person's duties may not

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include the sale or delivery of nonintoxicating beer or alcoholic liquors: *Provided, however,* That the authorization to employ persons under the age of eighteen years shall be clearly indicated on the licensee's license.

For State Law basis of this section, see WV Code §11-16-18.

Section 5A-6-3. Unlawful acts of persons; criminal penalties.

- (a) (1) Any person eighteen or over but under the age of twenty-one years who purchases, consumes, sells, possesses or serves nonintoxicating beer is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed five hundred dollars or shall be incarcerated in jail for a period not to exceed seventy-two hours, or both or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year. Any person under the age of eighteen years who purchases, consumes, sells, possesses or serves nonintoxicating beer is guilty of a status offense as that term is defined in WV Code 49-1-4 and, upon adjudication therefor, shall be referred to the Department of Health and Human Resources for services, as provided in WV Code 49-5-11.
 - (2) Nothing in this article, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of nonintoxicating beer as defined in this article. Further, nothing in this article, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores: *Provided,* That such person shall not sell or deliver nonintoxicating beer.
 - (3) Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing nonintoxicating beer when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules of the Commissioner.
- (b) Any person under the age of twenty-one years who, for the purpose of purchasing nonintoxicating beer, misrepresents his or her age or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own or who illegally attempts to purchase nonintoxicating beer

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is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed fifty dollars or shall be imprisoned in jail for a period not to exceed seventy-two hours, or both such fine and imprisonment or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year.

- (c) Any person who shall knowingly buy for, give to or furnish nonintoxicating beer to anyone under the age of twenty-one to whom they are not related by blood or marriage is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed one hundred dollars or shall be imprisoned in jail for a period not to exceed ten days, or both such fine and imprisonment.
- (d) (1) Any person who at any one time transports into the state for their personal use, and not for resale, more than six and seventy-five hundredths gallons of nonintoxicating beer, upon which the West Virginia barrel tax has not been imposed, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed one hundred dollars and have all the untaxed nonintoxicating beer in their possession at the time of the arrest confiscated, or imprisoned for ten days in jail, or both fined and imprisoned.
- (2) If the Congress of the United States repeals the mandate established by the Surface Transportation Assistance Act of 1982 relating to national uniform drinking age of twenty-one as found in section six of Public Law 98-363, or a court of competent jurisdiction declares the provision to be unconstitutional or otherwise invalid, it is the intent of the Legislature that the provisions contained in this section and section eighteen of this article which prohibit the sale, furnishing, giving, purchase or ownership of nonintoxicating beer to or by a person who is less than twenty-one years of age shall be null and void and the provisions therein shall thereafter remain in effect and apply to the sale, furnishing, giving, purchase or ownership of nonintoxicating beer to or by a person who is less than nineteen years of age.

For State Law basis of this section, see WV Code §11-16-19.

Section 5A-6-4. License required for manufacture, sale or transportation.

No person shall manufacture, sell, possess for sale, transport or distribute non intoxicating beer within this City except in accordance with the provisions of this article and after first obtaining a City license therefore, as hereinafter provided.

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