

Chapter 6 ALCOHOLIC BEVERAGES

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ARTICLE I. IN GENERAL

Sec. 6-1. Definitions.

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Sec. 6-1. Definitions.

Words and phrases defined in W. Va. Code, §§ 11-16-3, 60-1-5 and 60-7-2 shall have the same meanings as therein defined wherever such words and phrases are used in this chapter.

(Code 1981, § 3-101)

Sec. 6-2. Intoxication or drinking in public places; illegal possession.

No person shall:

- (1) Appear in a public place in an intoxicated condition.
- (2) Drink alcoholic liquor or nonintoxicating beer or have an open container of alcoholic liquor or nonintoxicating beer in or on any public sidewalk, walkway, entranceway, street, lane, waterway or other public place. No person shall deposit such container upon public or private property except in a receptacle intended for such purpose.
- (3) Drink alcoholic liquor or nonintoxicating beer in a motor vehicle on any highway, street, alley or in a public parking area. No person shall possess an open container of nonintoxicating beer or alcoholic liquor in a motor vehicle except in a place which can be reached only by leaving the vehicle.
- (4) Tender an open container of alcoholic liquor or nonintoxicating beer to another person in a public place.
- (5) Possess alcoholic liquor in the amount in excess of one gallon, in containers not bearing stamps or seals of the state alcohol beverage control commissioner, without first obtaining written authority from the commissioner therefor.
- (6) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of W. Va. Code, ch. 60.

(Ord. No. 94-3, 5-16-1994)

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Sec. 6-3. Restrictions on sale.

No sale of nonintoxicating beer or intoxicating liquor shall be made to the following persons within the town.

- (1) A person less than 21 years of age.
- (2) A person addicted to alcoholic beverages.
- (3) A person who is addicted to the use of narcotic drugs.
- (4) A person declared mentally incompetent by a court of legal jurisdiction.

(Code 1981, § 3-103)

Sec. 6-4. Violation; penalties.

A violation of any provision of sections 6-1 through 6-3 shall be punishable by a fine of not more than \$200.00 for each separate offense.

(Code 1981, § 3-104)

Secs. 6-5—6-26. Reserved.

ARTICLE II. INTOXICATING LIQUOR AND WINE SALES [LII](#)

Sec. 6-27. Tax imposed.

Sec. 6-28. Town license required for wine sales.

Secs. 6-29—6-59. Reserved.

Sec. 6-27. Tax imposed.

Pursuant to state law, there is hereby imposed a tax of five percent of the retail purchase price of any and all intoxicating liquors purchased from the alcohol beverage control commission or from any person licensed to sell wine at retail to the public under the provision of chapter 60, article 8 of the Code of West Virginia, within the corporate boundaries of the town. Such tax shall be levied upon the purchaser of said intoxicating liquor or wine, and shall be added to any tax collected with the retail purchase price of such intoxicating liquor or wine. Such tax shall be received by the town from the state treasury pursuant to the rules and regulations adopted by the alcohol beverage control commissioner. 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 W. Va. Code, § 60-7-1 et seq., from a wine distributor licensed pursuant to the provisions of W. Va. Code, § 60-3-1 et seq.

(Ord. No. 84-1, 7-19-1983)

Sec. 6-28. Town license required for wine sales.

- (a) Every person licensed by the state pursuant to the provisions of article 8, chapter 60 of the Code of West Virginia, whether as a distributor or retailer of wine and who does business as such within the town shall obtain a town license as provided in this article.

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- (b) The town shall collect an annual license tax as follows:
 - (1) For a distributor's license, \$2,500.00 per year.
 - (2) For a retailer's license, \$150.00 per year.
- (c) The license period shall begin on July 1 of each year, and end on June 13 of the following year. If the initial license is granted for less than a year, the fee shall be computed in proportion to the number of quarters remaining in the fiscal year, including the quarter in which application is made.
- (d) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

(Ord. of 8-18-1981, § 3-202)

Secs. 6-29—6-59. Reserved.

FOOTNOTE(S):

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State Law reference— Municipal tax on purchase of intoxicating liquors, private club fees, W. Va. Code, § 8-13-7.

ARTICLE III. NONINTOXICATING BEER

Sec. 6-60. License required.

Sec. 6-61. License tax.

Sec. 6-62. Application for issuance of license.

Sec. 6-63. Unlawful acts of licensees; penalties.

Sec. 6-64. Violation; penalties.

Sec. 6-65. Revocation of license.

Secs. 6-66—6-87. Reserved.

Sec. 6-60. License required.

Every person licensed by the state pursuant to the provisions of article 16, chapter 11 of the Code of West Virginia, whether as a retailer, private club, wholesaler or brewer of nonintoxicating beer and who does business as such within the town shall obtain town license as provided in this article, provided that nothing contained in this article, and no license or payment under the provisions hereof, shall be taken to legalize any act which otherwise may be in violation of law, or exempt any person from any penalty prescribed for such violation. Upon the issuance of a town license, the licensee shall display it at all times in a conspicuous place upon the premises thereby licensed. Town licenses under this article shall not be transferable. A license shall be required for each place of business and a full tax paid for each such place of business.

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(Code 1981, § 3-301)

Sec. 6-61. License tax.

There is hereby levied and imposed by annual license tax upon all brewers and dealers, as covered under section 6-60, in or of nonintoxicating beer within the town, which license period shall begin on July 1 of the following year, and if granted for a shorter period, the same shall be computed quarterly in proportion to the remainder of the fiscal year as follows:

- (1) Retail dealers shall be divided into two classes, Class A and Class B:
 - a. In the case of Class A retail dealer, the license fee shall be \$100.00 for each place of business; the license fee for social, fraternal or private clubs not operating for profit, and having been in continuous operation for five years or more immediately preceding the date of application, shall be \$100.00. Class A license issued for social, fraternal or private clubs as herein provided, shall authorize the licensee to sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other Class A licenses shall authorize the licensee to sell nonintoxicating beer at retail for consumption on or off the licensed premises.
 - b. In the case of Class B retailer, there shall be two types of a Class B license. The fee for a Class B license authorizing the sale of unchilled beer only shall be \$15.00. The fee for a Class B license authorizing the sale of both chilled and unchilled beer shall be \$100.00. A Class B license shall authorize the licensee to sell nonintoxicating beer at retail in bottles, cans or other sealed containers only, and only for consumption off the licensed premises. Sales under this license to any person at any one time must be in less quantities than five gallons. Such license may be issued only to the proprietor or owner of a grocery store. For the purpose of this section, the term "grocery store" means and includes any retail establishment commonly known as a grocery store or delicatessen, where food or food products are sold for consumption off the premises.
- (2) In the case of a wholesaler, the license fee shall be \$200.00 for each place of business.
- (3) In the case of a brewer with its principal place of business located in the town, the license fee shall be \$500.00 for each place of manufacture.

(Code 1981, § 3-302)

Sec. 6-62. Application for issuance of license.

- (a) All licenses under the provisions of this article shall be issued by the recorder upon written application therefor verified by the applicant under oath. Application forms shall be furnished by the town, designed to elicit all information necessary for the recorder to determine the eligibility of the applicant for the license applied for; the amount of license fee; the location within the town of the premises to be licensed and whether or not such premises and structures comply with all applicable provisions of state law, this Code and other ordinances; and it shall be unlawful and shall constitute false swearing for any applicant to knowingly make any false statement in any application for a license under this article.
- (b) No license under this article shall be issued to any person, firm, partnership, corporation, association, social, fraternal or business club having its place of business situated within 250 feet of certain premises, to wit, the lot or parcel of ground of any church or school, and said distance of 250 feet shall be measured from the premises, to wit, the lot or parcel of ground on which stands the building occupied or to be occupied by the licensee, to the premises as aforesaid of any church or school, said measurement to be made following the pavement, walkway, road or alley between the two premises, using the shortest of said routes where more than one route exists. It shall be unlawful and shall constitute false swearing for any

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applicant knowingly to make any false statement in any application for license under this article.

- (c) Before issuing any license hereunder, the town recorder may require the applicant to display his corresponding state license.

(Code 1981, § 3-303)

Sec. 6-63. Unlawful acts of licensees; penalties.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Licensee means any person paying a license tax to the town pursuant to this article.

- (b) *Prohibited acts.* It shall be unlawful:

- (1) For any licensee, his 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 on weekdays between the hours of 2:00 a.m., and 7:00 a.m., or between the hours of 2:00 a.m. and 1:00 p.m. on any Sunday, except in private clubs licensed under the provisions of this chapter, where the hours shall conform with the hours of sale of alcoholic liquors as provided in chapter 60 of the Code of West Virginia.
- (2) For any licensee, his servants, agents or employees, to sell, furnish or give any nonintoxicating beer to any person visibly or noticeably intoxicated, or to any insane person, or to any habitual drunkard, or to any person under the age of 21 years.
- (3) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer except for cash. 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 such containers when title is retained by the vendor.
- (4) For any brewer or distributor or his agents, to transport or deliver nonintoxicating beer to any retail licensee on Sunday.
- (5) 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 nothing contained herein shall prohibit a distributor from offering for sale or renting tanks of carbonic gas.
- (6) For any licensee to transport, sell, deliver or purchase any nonintoxicating beer or product of the brewing industry upon which there shall appear a label or other informative data which in any manner refers to the alcoholic content of such beer or product of the brewing industry or upon the label of which there appears the word "strong," "full strength," "extra strength," "prewar strength," "high test" or other similar expressions bearing upon the alcoholic content of such product of the brewing industry, or which refers in any manner to the original alcoholic strength, extract or balling proof from which such beverage was produced, except that such label shall contain a statement that the alcoholic content thereof does not exceed the state allowable percent by weight.
- (7) For any licensee to permit in his premises any lewd, immoral or improper entertainment, conduct or practice.

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- (8) For any licensee, except the holder of a license to operate a private club issued under the provisions of this chapter, to possess a federal license, tax receipt or other permit entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks.
- (9) For any licensee to obstruct the view of the interior of his premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying such premises. The interior of all licensed premises shall be adequately lighted at all times; provided that provisions of this subsection shall not apply to the premises of a Class B retailer or to the premises of a private club licensed under the provisions of this 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 such license or on premises directly or indirectly used in connection therewith; provided that the prohibitions contained in this subsection with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors shall not be applicable with respect to the holder of a license to operate a private club issued under the provisions of this chapter.
- (11) For any licensee to print, paint or place upon the door, window, or in any other public place in or about the premises, the word "saloon" or any word of similar character or nature, or for the word "saloon" or similar words to be used in any advertisement by the licensee.
- (12) For any retail licensee to sell or dispense nonintoxicating beer purchased or acquired from any source other than a licensed distributor or brewer under the laws of the state.
- (13) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his premises or to permit the use of loud musical instruments if either of any thereof may disturb the peace and quietude of the community wherein such business is located; provided that no licensee shall have in connection with his place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind.
- (14) 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 such revocation, or for any retailer to employ knowingly any such person within such time.
- (15) For any distributor to sell, possess for sale, transport or distribute nonintoxicating beer except in the original container.
- (16) For any licensee to permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of the state.
- (17) For any Class B retailer to permit the consumption of nonintoxicating beer upon his licensed premises.
- (18) For any licensee, his servants, agents, or employees, or for any licensee by or through such servants, agents or employees, to allow, suffer or permit any person under the age of 18 years to loiter in or upon any licensed premises; except, however, that the provisions of this subsection shall not apply where such person under the age of 18 years is in, or upon such 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 such premises.
- (19) For any licensee to sell nonintoxicating beer to which wine, spirits, or alcohol has been added.

(Code 1981, § 3-304)

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Sec. 6-64. Violation; penalties.

Any person who violates any provision of this article shall, upon conviction, be punished for each offense by a fine of not less than \$25.00 nor more than \$500.00.

(Code 1981, § 3-305)

Sec. 6-65. Revocation of license.

The town council shall revoke the license granted or refuse to issue to any licensee under this article, subject to an appeal of any licensee to a court of competent jurisdiction, whenever such applicant or licensee has his license revoked by the state nonintoxicating beer commissioner pursuant to the provisions of chapter 11, article 16 of the West Virginia Code, as last amended or has been found guilty of a violation of provisions of section 6-63 or whose application does not comply with the provisions of section 6-62.

(Code 1981, § 3-306)

Secs. 6-66—6-87. Reserved.

ARTICLE IV. PRIVATE CLUBS

Sec. 6-88. Definitions.

Sec. 6-89. License required.

Sec. 6-90. Application and fee.

Sec. 6-91. Duties of state license holders.

Sec. 6-92. Revocation of license.

Sec. 6-88. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Private club means:

- (1) A nonprofit social club which allows in only dues-paying members of good standing guests, collects dues which it does not pay to shareholders, and has a private building with a kitchen suitable for serving guests.
- (2) A recognized fraternal or veterans organization which allows in only dues-paying members of good standing and guests, collects dues which it does not pay to shareholders, and has a private building with a kitchen suitable for serving guests.
- (3) An organization operated for legitimate purposes which has at least 100 members, allows in only dues-paying members of good standing and their guests, collects dues which it does not pay to shareholders, has a private building with a kitchen suitable for serving guests and employs a staff to serve meals for those guests.

(Code 1981, § 3-401(A))

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Sec. 6-89. License required.

All private clubs, the premises of which are situated within the corporate limits of the town, shall obtain a town license and shall pay to the town an annual license fee.

(Code 1981, § 3-401(B))

Sec. 6-90. Application and fee.

(a) Application for a license to operate a private club shall be made to the town recorder and shall include:

- (1) The name of the applicant;
- (2) If such applicant is an incorporated association, the names and addresses of the members of its governing board;
- (3) If such applicant is a corporation, the names and addresses of its officers and directors;
- (4) The place at which such applicant shall conduct its operation and whether the same is owned or leased by the applicant;
- (5) The name of members of the applicant;
- (6) The names of any national organizations with which the applicant is affiliated and the nature of such affiliation.

It shall be sufficient for the purpose of submitting such application to submit a copy of the application of such private club made to the state for a state license to operate such private club.

(b) A license fee is hereby established, as follows:

- (1) Fraternal or veteran organizations, nonprofit social clubs: \$375.00.
- (2) Private clubs other than those in subsection (b)(1) of this section:

| | |
|-------------------------|------------|
| Less than 1,000 members | \$500.00 |
| More than 1,000 members | \$1,250.00 |

- (3) The fee for any such license issued following January 1 of any year and to expire on June 30 of such year shall be one-half the annual fee noted in subsections (b)(1) and (2) of this section.

(Code 1981, § 3-402)

Sec. 6-91. Duties of state license holders.

All licensees shall report annually to the recorder to show their state license and to pay town license fees. The licenses of both the town and the state shall be displayed in plain view at the place of business, with an annual year ranging from July 1 to June 30.

(Code 1981, § 3-403)

Sec. 6-92. Revocation of license.

The recorder shall automatically void all town licenses in places where the state license has also been voided.

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(Code 1981, § 3-404)