



WEST VIRGINIA
ALCOHOL BEVERAGE CONTROL ADMINISTRATION
FREDRIC L. WOOTON, COMMISSIONER

April 25, 2024

VIA HAND DELIVERY

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

FILED
2024 APR 26 A 10:10
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Re: Order of the Commissioner -
Issued pursuant to W. Va. Code §60-7-8g(h) regarding legislative intent of
W. Va. Code §60-7-8g(b)(2) and (f) from HB 5295, and interpretation of W.
Va. Code §60-7-8g(c)(3) all related to private outdoor designated areas
(PODA)

Dear Secretary of State Warner:

With passage of HB 5295, effective from passage on March 4, 2024, this 2024 Regular Session, I became aware of two issues with certain language in the bill with respect to Class A licenses referenced in W. Va. Code §60-7-8g(b)(2), (c)(3), (f), and (h).

Issue 1: In conversations with myself and WVABCA staff, the bill drafters and WVABCA staff, legislators, and the administration, the intent of the statute was to include all Class A licenses as qualified permit holders, this would include:

- (1) the Class A licenses issued per W. Va. Code §11-16-1 et seq., or Class A Taverns for the sale and consumption of nonintoxicating beer and nonintoxicating craft beer;
- (2) the Class A licenses issued per W. Va. Code §60-7-1 et seq., or Class A Private Club types for the sale and consumption of nonintoxicating beer and nonintoxicating craft beer, wine, and liquor; and
- (3) the Class A licenses issued per W. Va. Code §60-8-1 et seq., or Class A Private Wine Restaurants, Private Wine Bed and Breakfasts and Private Wine Spas for the sale and consumption of wine.

Further, the legislative intent was not to include Class B – off-premises licensees.

Upon my review of HB 5295, W. Va. Code §60-7-8g, specifically section (h), and the legislative intent:

Effective May 1, 2024, I hereby exercise the authority granted by the Legislature in W. Va. Code §60-7-8g(h) for the Commissioner to by order allow an exception for the circumstances regarding the operation of qualified permit holders in a PODA; the exception shall permit any Class A license issued per W. Va. Code §11-16-1 et seq., W. Va. Code §60-7-1 et seq., or W. Va. Code §60-8-1 et seq., to obtain a qualified permit per W. Va. Code §60-7-8g and participate in the PODA to the extent authorized by their license. All Class A licensees may permit consumption of liquor, wine and beer in an

authorized PODA cup on the licensed premises, however, the Class A licensees may only lawfully sell the alcohol authorized by their current license. Nothing herein prohibits a Class A licensee from changing their current license status. All affected Class A licenses must obtain a qualified permit and adhere to the requirements W. Va. Code 60-7-8g, and as applicable W. Va. Code §11-16-1 et seq., W. Va. Code §60-7-1 et seq., or W. Va. Code §60-8-1 et seq.

Issue 2: Upon my review of W. Va. Code §60-7-8g, (b)(2), (c)(3), and (f), the statute reads that a Class S2 licensee or private fair and festival licensee must become a qualified permit holder to participate in the PODA and also meet the qualified permit requirements. A Class S2 licensee pays a fee of \$500 for a license to operate a private fair and festival on a temporary basis where the event operates for 10 consecutive days. In my review, requiring an S2 licensee to pay the qualified permit holder fee of \$100 set forth at W. Va. Code §60-7-8g(c)(3) to operate in PODA appears excessive. An S2 licensee would still need to meet all other requirements of a qualified permit holder and W. Va. Code §60-7-8g.

Effective May 1, 2024, I hereby exercise the authority granted by the Legislature in W. Va. Code §60-7-8g(h) for the Commissioner to by order allow a waiver for the circumstances regarding the operation of qualified permit holders in a PODA; the waiver waives the W. Va. Code §60-7-8g(c)(3) \$100 fee for a S2 license holder applying for a qualified permit. The S2 license holder will have to meet all other requirements of a qualified permit holder in order to be issued a Class S4 license in addition to its Class S2 license.

This order granting an exception and a waiver shall stay in effect until such time as the Legislature is able to amend the W. Va. Code §60-7-8g and any other applicable code sections in a special session or the 2025 Regular Session.

Please file this Commissioner's Order in the State Register and perhaps with 175 CSR 2, Private Club licensing. If you have any further questions, please feel free to contact the WVABCA at 304-356-5500.

Sincerely,



Fredric L. Wooton
WVABCA Commissioner