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## PART FIVE — GENERAL OFFENSES CODE

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### ARTICLE 521 Liquor Control

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- 521.13** Application for a new license or a renewal of an existing license.
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#### CROSS REFERENCES

See sectional histories for similar State law.  
Authority to regulate liquor sales—see WV Code 8-12-5(20)  
Non-intoxicating beer—see WV Code 11-16  
Local option—see WV Code 60-5  
Search warrants—see WV Code 60-6-18  
Public drunkenness—see Ord. 517.05

#### **521.01** Definitions.

For the purposes of this article, unless the context clearly indicates otherwise, the following definitions shall apply:

- (a) “Alcoholic liquor” includes alcohol, beer, wine and spirits, and any liquid or solid capable of being used as a beverage, but shall not include non-intoxicating beer.
- (b) “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 a non-intoxicating beer.
- (c) “Intoxicated” means having one’s faculties impaired by alcohol or other drugs to the point where physical or mental control or both are marked diminished.
- (d) “Manufacturer” means any person engaged in the manufacture of any alcoholic liquor, including, among others, a distiller, rectifier, wine maker and brewer.
- (e) “Non-intoxicating beer” means 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 industries including malt coolers and containing at least one half of one percent (0.5%) alcohol by weight, or six percent (6%) by volume, whichever is greater, all of which are hereby declared to be non-intoxicating and the word “liquor” is used in this article shall not be construed to include or embrace non-intoxicating beer nor any of the beverages, products, mixtures or preparation included within this definition.
- (f) “Person” means an individual, firm, partnership, limited partnership, corporation or voluntary association.
- (g) “Public place” means 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

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resort or amusement. "Public place" does not mean or include any of the above-named places or any portion thereof which qualify and are licensed under the provisions of West Virginia Code Chapter 60 or the Codified Ordinances to sell alcoholic liquors for consumption on the premises.

- (h) "Sale" means any transfer, exchange or barter in any manner or by any means, for a consideration, and includes all sales made by any principal proprietor, agent or employee.
- (i) "Selling" includes the solicitation or receipt of orders, possession for sale, and possession with intent to sell.
- (j) "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of fruits or other agricultural products, containing sugar. (WV Code 60-1-5.)

### **521.02 Article not applicable to certain uses by physicians, druggists and others.**

The provisions of this article shall not prevent:

- (a) A physician from prescribing the use of alcoholic liquors when necessary for a bona fide patient;
- (b) A druggist from selling, upon a prescription properly issued by a physician, alcoholic liquors for medicinal purposes;
- (c) A physician, dentist or veterinarian, in the legitimate practice of his profession, from using and administering alcoholic liquors.
- (d) Hospitals, sanitariums or that division of any institution which is regularly conducted as a hospital, dispensary or infirmary from using or administering alcoholic liquors to bona fide patients. Institutions and the divisions thereof provided in this section may carry a stock of alcoholic liquors sufficient for this purpose.
- (e) Religious organizations from using wine for sacramental purposes. (WV Code 60-6-5.)

### **521.03 Prohibited acts generally.**

No person shall:

- (a) Manufacture or sell in this City, without a license, any alcoholic liquor except as permitted by West Virginia Code Chapter 60;
- (b) Aid or abet in the manufacture or sale of alcoholic liquor without a license, except as permitted by West Virginia Code Chapter 60;
- (c) Sell without a license any alcoholic liquor other than provided by West Virginia Code Article 60-6;
- (d) Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude, unrectified or impure form of ethyl alcohol, or any other foreign or deleterious substance or liquid;
- (e) Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has been sold at retail in this State;
- (f) Advertise any alcoholic liquor in this State except in accordance with the rules and regulations prescribed by the West Virginia Alcohol Beverage Control Commissioner;
- (g) Distribute, deal in, process or use crowns, stamps, or seals required under the authority of West Virginia Code Chapter 60, except in accordance with the rules and regulations prescribed by the West Virginia Alcohol Beverage Control Commissioner. (WV Code 60-6-7.)
- (h) Manufacture, sell, give or offer to make a sale or gift of, transport or otherwise possess any alcoholic liquor or non-intoxicating beer except as permitted by West Virginia Code Chapter 11 and 60.
- (i) Whoever violates subsection (a) to (g) hereof is guilty of a misdemeanor for a first offense.

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### **521.04 Unlawful sale or possession by alcoholic liquor license.**

No person licensed under West Virginia Code Chapter 60 shall:

- (a) Sell alcoholic liquors of a kind other than that which is permissible under West Virginia Code Chapter 60;
- (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 regulations of the West Virginia Alcohol Beverage Control Commissioner; (WV Code 60-6-8.)
- (d) Sell alcoholic liquors 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 West Virginia Code Chapter 60A;
  - (5) Mentally incompetent. (WV Code 60-3-22.)
- (e) Keep on the premises covered by his license any alcoholic liquor other than that which is authorized by West Virginia Code Chapter 60. (WV Code 60-6-8.)

### **521.05 Unlawful purchase of alcoholic liquors from State agency.**

No person shall:

- (a) Being under the age of twenty-one years, for the purpose of purchasing alcoholic liquors from a State liquor store or an agency, misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or illegally attempt to purchase alcoholic liquors from a State liquor store or an agency.
- (b) Knowingly buy for, give to or furnish to anyone under the age of twenty-one years to whom they are not related by blood or marriage, any alcoholic liquor from whatever source. (WV Code 60-3-22a.)

### **521.06 Intoxication or drinking in public places; illegal possession.**

No person shall:

- (a) Appear in a public place in an intoxicated condition;
- (b) Drink alcoholic liquor or non-intoxicating beer or have an open container of alcoholic liquor or non-intoxicating beer in or on any public sidewalk, walkway, entranceway, street, lane or other public place;
- (c) Drink alcoholic liquor or non-intoxicating beer in a motor vehicle on any highway, street, alley or in a public garage. No person shall possess an open container of non-intoxicating beer or alcoholic liquor in a motor vehicle except in a place which can be reached only by leaving the vehicle;
- (d) Tender a drink of alcoholic liquor to another person in a public place;
- (e) Possess alcoholic liquor in the amount in excess of one gallon, in containers not bearing stamps or seals of the West Virginia Alcohol Beverage Control commissioner, without having first obtained written authority from the Commissioner therefore;
- (f) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of West Virginia Code Chapter 60.
- (g) Any person who possesses any beer or liquor under the age of 21 is in violation of the provisions of West Virginia Code Chapter 60 and 11.

Whoever violates subsection (e) or (f) hereof is guilty of a misdemeanor for a first offense. (WV Code 60-6-9.)

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### 521.07 Acts prohibited by non-intoxicating beer license.

- (a) No licensee under West Virginia Code Article 11-16, his, her, its or their servants, agents or employees shall sell, give or dispense, and no individual shall drink or consume, in or on any licensed premises or in any rooms directly connected therewith, non-intoxicating beer or cooler 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 West Virginia Code Article 60-7, where the hours shall conform with the hours of sale of alcoholic liquors;
- (b) No licensee, his, her, its or their servants, agents or employees shall sell, furnish or give any non-intoxicating 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;
- (c) No licensee, his, her, its or their servants, agents or employees, shall sell, furnish or give any non-intoxicating beer as defined in this article to any person who is less than twenty-one years of age;
- (d) No distributor shall sell or offer to sell, and no retailer shall purchase or receive, any non-intoxicating 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 provisions of this subsection. 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 sale, or from refunding to any purchaser the amount paid or deposited for such containers when title is retained by the vendor;
- (e) No brewer or distributor or his, her its or their agents, shall transport or deliver non-intoxicating beer as defined in this article to any retail licensee on Sunday;
- (f) No brewer or distributor shall give, furnish, rent or sell 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 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 such events: provided however that no such event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the non-intoxicating Beer Commissioner.
- (g) No licensee shall permit in his premises any lewd, immoral or improper entertainment, conduct or practice;
- (h) No licensee except the holder of a license to operate a private club issued under the provisions of West Virginia Code Article 60-7, or a holder of a license for a private wine restaurant issued under the provisions of West Virginia Code Article 60-8, shall possess a Federal license, tax receipt or other permit entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks other than non-intoxicating beer;
- (i) No licensee shall 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, the premises of a private club licensed under the provisions of West Virginia Code Article 60-7, or the premises of a private wine restaurant licensed under the provisions of West Virginia Code Article 60-8;
- (j) No licensee shall manufacture, import, sell, trade, barter, possess or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by

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such license or on premises directly or indirectly used in connection therewith: provided, that the prohibition 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 provision of West Virginia Code Article 60-7, nor shall the provisions of West Virginia Code Article 60-8, insofar as such private wine restaurant is authorized to serve wine;

- (k) No retail licensee shall sell or dispense non-intoxicating 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:
- (l) No licensee shall permit loud, boisterous or disorderly conduct of any kind upon his or her premises or permit the use of loud music instruments if either or any of the same may disturb the peace and quietude of the community wherein such business is located : provided, that no licensee shall 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;
- (m) No person whose license has been revoked, shall obtain employment with any retailer within the period of one year from the date of such revocation, and no retailer shall employ knowingly any such person within such time
- (n) No distributor shall sell, possess for sale, transport or distribute non-intoxicating beer except in the original container;
- (o) No licensee shall knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this State or Municipality;
- (p) No Class B retailer shall permit the consumption of non-intoxicating beer upon his licensed premises;
- (q) No Class A licensee, his, her, its or their servants, agents or employees, of any licensee by or through such servants, agents or employees, shall allow 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 subsection shall not apply where such person under the age of eighteen years is in or upon such premise in the immediate company of his or her parents, or where and while such person under the age of eighteen years is in or upon such premises for the purpose of and actually making a lawful purchase of items or commodities 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;
- (r) No distributor shall sell, offer for sale, distribute or deliver any non-intoxicating beer outside the territory assigned to such distributor by the brewer or manufacturer of such non-intoxicating beer or sell, offer for sale, distribute or deliver any such non-intoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of such non-intoxicating beer: provided, that nothing herein shall be deemed to prohibit sales of convenience between distributors licensed in this State wherein one such distributor sells, transfers or delivers to another such distributor a particular brand or brands for sale at wholesale; and
- (s) No licensee or any agent, servant or employee of any such licensee shall knowingly violate any rule or regulation lawfully promulgated by the Commissioner.
- (t) Any person who violates any provision of this section, or any rule, regulation 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, shall be punished as provided in Section 521.99.

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- (u) Nothing in this section nor any rule or regulation of the Commissioner shall prevent or be deemed to prohibit any licensee from employing any person who is at least eighteen years of age to serve in such licensee's lawful employ, including the sale or delivery of non-intoxicating 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 recreation 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 less than eighteen years of age but at least sixteen years of age; provided that such person's duties shall not include the sale or delivery of non-intoxicating beer or alcoholic liquors: provided however that the authorization to employ such persons under the age of eighteen years shall be clearly indicated on the licensee's license. (WV Code 11-16-18.)

### **521.08 Unlawful purchase of non-intoxicating beer.**

- (a) No person under the age of twenty-one years for the purpose of purchasing non-intoxicating beer, shall misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or shall illegally attempt to purchase non-intoxicating beer.
- (b) No person shall knowingly buy for, give to or furnish non-intoxicating beer to anyone under the age of twenty-one years to whom they are not related by blood or marriage. (WV Code 11-16-19.)

### **521.09 Acts prohibited by private club license.**

- (a) No person licensed under West Virginia Code Article 60-7, or his agent, employee or member thereof, on such licensee's premise shall:
- (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 alcoholic liquors, for or to 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 alcoholic liquors, for or to any mental incompetent, or for a person who is physically incapacitated due to consumption of alcoholic liquor or the use of drugs;
  - (5) Sell, give or dispense any alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of 3:00 a.m. and 1:00 p.m. on Sunday.
  - (6) Permit the consumption by, or serve to, on the licenses premises any 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;
  - (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 the private club or a guest of such member;
  - (9) Permit any person who is less than eighteen years of age to sell, furnish or give alcoholic liquors to any person; or

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- (10) Violate any reasonable rule or regulation of the Alcohol Beverage Control Commissioner.
- (b) No licensee shall advertise in any news media or other means, outside the licensee's premises, the fact that alcoholic liquors may be purchased thereat. (WV Code 60-7-12.)

### **521.10 Unlawful purchase from private club.**

No person shall:

- (a) Being under the age of twenty-one years, for the purpose of purchasing non-intoxicating beer or alcoholic liquors from a licensee, misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or illegally attempt to purchase non-intoxicating beer or alcoholic liquors from a licensee.
- (b) Knowingly buy for, give to or furnish to anyone under the age of twenty-one years to whom they are not related by blood or marriage, any non-intoxicating beer or alcoholic liquors purchased from a licensee. (WV Code 60-7-12a.)

### **521.11 Acts prohibited by wine dealers.**

It shall be unlawful:

- (a) For a distributor to sell or deliver wine purchased or acquired from any source other than a person who is registered under the provisions of West Virginia Code 60-8-6, or for a retailer to sell or deliver wine purchased or acquired from any source other than a licensed distributor or a farm winery as defined in West Virginia Code 60-1-5a;
- (b) Unless otherwise specifically provided for by the provisions of West Virginia Code Article 60-8, for a licensee under West Virginia Code Article 60-8 to acquire, transport, possess for sale, or sell wine other than in the original package;
- (c) For a licensee, his servants, agents or employees to sell, furnish or give wine to any person less than twenty-one years of age or to a mental incompetent person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs;
- (d) For a licensee to permit a person who is less than eighteen years of age to sell, furnish or give wine to any person;
- (e) For a distributor to sell or deliver any brand of wine purchased or acquired from any source other than the primary source of the supply of the wine which granted the distributor the right to sell such brand at wholesale. For the purpose of this article, "primary source of supply" means the vintner of the wine, the importer of a foreign wine who imports the wine into the United States, the owner of a wine at the time it becomes a marketable product, the bottler of a wine, or an agent specifically authorized by any of the above enumerated persons to make a sale of the wine to a West Virginia distributor: provided, that no retailer shall sell or deliver wine purchased or acquired from any source other than a distributor licensed as such in this State: provided however, that nothing herein shall be deemed to prohibit sales of convenience between distributor licensed in this State wherein one such distributor sells, transfers or delivers to another such distributor a particular brand or brands for sale at wholesale of which brand or brands such other distributor may be temporarily out of stock. The Alcohol Beverage Control Commissioner shall promulgate such rules or regulations as may be necessary to carry this subsection into effect;
- (f) For a person to violate any reasonable rule or regulation promulgated by the Alcohol Beverage Control Commissioner under West Virginia Code Article 60-8.
- (g) Nothing in this article, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any licensee from employing any person who is at least eighteen years of age to serve in any licensee's lawful employment, including the sale or delivery

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of wine under the provisions of this article. With the prior approval of the Commissioner a licensee whose principle 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 such person's duties shall not include the sale or delivery of non-intoxicating beer or alcoholic liquors: provided however, that the authorization to employ such persons, under the age of eighteen years shall be clearly indicated on the licensee's license. (WV Code 60-8-20.)

### **521.12 Unlawful purchase of wine.**

No person shall:

- (a) Being under the age of twenty-one years, for the purpose of purchasing wine or other alcoholic liquors from a licensee, misrepresent his or her age, or for such purposes present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or illegally attempt to purchase wine or other alcoholic liquors.
- (b) Knowingly buy for, give to or furnish wine or other alcoholic liquors from any source to anyone under the age of twenty-one years to whom they are not related to by blood or marriage. (WV Code 60-8-20a.)

### **521.13 Application for a new license or a renewal of an existing license.**

Application for a new license or a renewal of an existing license shall be on a form provided by the Town. The application will not be considered complete unless accompanied by a copy of:

- (a) Applicant's completed WVABCC for 192, Application for Retail License, and
- (b) The floor plan of the licensed premises submitted to the WVABCC, and
- (c) The form submitted to the WVABCC showing the distance of the business premises from churches, residences, schools, and government offices.

### **521.99 Penalty.**

*(EDITOR'S NOTE: See Section 501.99 for General Offenses Code penalty if no specific penalty is provided.)*

- (a) Whoever violates Section 521.05(a), 521.08(A), 521.10(a) or 521.12(a) shall be fined not more than fifty dollars (\$50.00), or imprisoned for not more than seventy-two hours, or both, or in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for not more than one year.
- (b) Whoever violates Section 521.05(b), 521.08(b), 521.10(b), or 521.12(b) shall be fined not more than one hundred dollars (\$100.00) or imprisoned for not more than ten days, or both. (WV Code 11-16-19, 60-3-22a, 60-7-12a, 60-8-20a.)
- (c) Whoever violates Section 521.06(a) shall be sentenced in accordance with the following options:
  - (1) Upon first offense, a fine of not more than one hundred dollars (\$100.00) and not more than thirty days in jail or completion of an alcohol education program of not more than six hours duration at the nearest community mental health-mental retardation center. If the individual, prior to conviction, agrees to voluntarily attend the alcohol education program, the judge 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 more than one hundred dollars (\$100.00) and not more than thirty days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health-mental retardation center.



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- (3) Upon third and subsequent convictions, a fine of not more than one hundred dollars (\$100.00) and not less than five nor more than thirty days in jail or a fine of not more than one hundred dollars (\$100.00) 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. A person charged with a violation of Section 521.06 (a) who is an alcoholic shall be found guilty by reason of addiction and proper disposition made pursuant to West Virginia Code Article 27-5 and 27-6A.
- (d) Whoever violates Section 521.06(b) to (d) shall be fined not more than one hundred dollars (\$100.00), or imprisoned not more than thirty days, or both. (WV Code 60-6-9.)