

ENGROSSED

H. B. 4529

(By Delegates Manchin, Ferro, Lawrence, Pethtel,
Boggs and Skaff)

[Introduced February 14, 2014; referred to the
Committee on the Judiciary.]

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11 A BILL to amend and reenact §60-8-2 and §60-8-16 of the Code of
12 West Virginia, 1931, as amended, all relating to the sale of
13 wine generally; expanding the definition of "person" for
14 purposes of holding a distributor license; allowing trusts,
15 limited liability companies and associations to hold a
16 distributor's license; and requiring certain disclosures by
17 applicants that are trusts, limited liability companies or
18 associations.

19 *Be it enacted by the Legislature of West Virginia:*

20 That §60-8-2 and §60-8-16 of the Code of West Virginia, 1931,
21 as amended, be amended and reenacted to all read as follows:

22 **ARTICLE 8. SALE OF WINES.**

23 PART II. SALE OF WINE GENERALLY.

24 **§60-8-2. Definitions.**

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

27 "Commissioner" or "commission" means the West Virginia Alcohol

1 Beverage Control Commissioner.

2 "Distributor" means any person whose principal place of
3 business is within the State of West Virginia who makes purchases
4 from a supplier to sell or distribute wine to retailers, grocery
5 stores, private wine bed and breakfasts, private wine restaurants,
6 private wine spas, private clubs or wine specialty shops and that
7 sells or distributes nonfortified dessert wine, port, sherry and
8 Madeira wines to wine specialty shops, private wine restaurants,
9 private clubs or retailers under authority of this article and
10 maintains a warehouse in this state for the distribution of wine.
11 For the purpose of a distributor only, the term "person" means and
12 includes an individual, firm, trust, partnership, limited
13 partnership, limited liability company, association or corporation.
14 Any trust licensed as a distributor or any trust that is an owner
15 of a distributor licensee, and the trustee or other persons in
16 active control of the activities of the trust relating to the
17 distributor license, is liable for acts of the trust or its
18 beneficiaries relating to the distributor license that are unlawful
19 acts or violations of this article, notwithstanding the liability
20 of trustees in article ten, chapter forty-four-d of this code.

21 "Fortified wine" ~~shall mean~~ means any wine to which brandy or
22 other alcohol has been added and shall include dessert wines which
23 are not fortified having an alcohol content by volume of at least
24 fourteen and one-tenths percent and not exceeding sixteen percent.

25 "Grocery store" means any retail establishment, commonly known
26 as a grocery store, supermarket, delicatessen, caterer or party

1 supply store, where food, food products and supplies for the table
2 are sold for consumption off the premises with average monthly
3 sales (exclusive of sales of wine) of not less than \$500 and an
4 average monthly inventory (exclusive of inventory of wine) of not
5 less than \$3,000. The term "grocery store" shall also include and
6 mean a separate and segregated portion of any other retail store
7 which is dedicated solely to the sale of food, food products and
8 supplies for the table for consumption off the premises with
9 average monthly sales with respect to such separate or segregated
10 portion (exclusive of sales of wine) of not less than \$3,000 and an
11 average monthly inventory (exclusive of inventory of wine) of not
12 less than \$3,000.

13 "Licensee" means the holder of a license granted under the
14 provisions of this article.

15 "Person" means and includes an individual, firm, partnership,
16 limited partnership, limited liability company, association or
17 corporation.

18 "Private wine bed and breakfast" means any business with the
19 sole purpose of providing, in a residential or country setting, a
20 hotel, motel, inn or other such establishment properly zoned as to
21 its municipality or local ordinances, lodging and meals to its
22 customers in the course of their stay at the establishment, which
23 business also: (1) Is a partnership, limited partnership,
24 corporation, unincorporated association or other business entity
25 which as part of its general business purpose provides meals on its
26 premises to its members and their guests; (2) is licensed under the

1 provisions of this article as to all of its premises or as to a
2 separate segregated portion of its premises to serve wine to its
3 members and their guests when such sale accompanies the serving of
4 food or meals; and (3) admits only duly elected and approved
5 dues-paying members and their guests while in the company of a
6 member and does not admit the general public.

7 "Private wine restaurant" means a restaurant which: (1) Is a
8 partnership, limited partnership, corporation, unincorporated
9 association or other business entity which has as its principal
10 purpose the business of serving meals on its premises to its
11 members and their guests; (2) is licensed under the provisions of
12 this article as to all of its premises or as to a separate
13 segregated portion of its premises to serve wine to its members and
14 their guests when such sale accompanies the serving of food or
15 meals; (3) admits only duly elected and approved dues-paying
16 members and their guests while in the company of a member and does
17 not admit the general public. Such private clubs that meet the
18 private wine restaurant requirements numbered (1), (2) and (3) in
19 this definition shall be considered private wine restaurants.

20 "Private wine spa" means any business with the sole purpose of
21 providing commercial facilities devoted especially to health,
22 fitness, weight loss, beauty, therapeutic services and relaxation,
23 and may be also a licensed massage parlor or a salon with licensed
24 beauticians or stylists, which business also: (1) Is a
25 partnership, limited partnership, corporation, unincorporated
26 association or other business entity which as part of its general

1 business purpose provides meals on its premises to its members and
2 their guests; (2) is licensed under the provisions of this article
3 as to all of its premises or as to a separate segregated portion of
4 its premises to serve up to two glasses of wine to its members and
5 their guests when such sale accompanies the serving of food or
6 meals; and (3) admits only duly elected and approved dues-paying
7 members and their guests while in the company of a member, and does
8 not admit the general public.

9 "Retailer" means any person licensed to sell wine at retail to
10 the public at his or her established place of business for
11 off-premises consumption and who is licensed to do so under
12 authority of this article.

13 "Supplier" means any manufacturer, producer, processor,
14 winery, farm winery, national distributor or other supplier of wine
15 who sells or offers to sell or solicits or negotiates the sale of
16 wine to any licensed West Virginia distributor.

17 "Tax" includes within its meaning interest, additions to tax
18 and penalties.

19 "Taxpayer" means any person liable for any tax, interest,
20 additions to tax or penalty under the provisions of this article
21 and any person claiming a refund of tax.

22 "Varietal wine" means any wine labeled according to the grape
23 variety from which such wine is made.

24 "Vintage wine" or "vintage-dated wine" means wines from which
25 the grapes used to produce such wine are harvested during a
26 particular year or wines produced from the grapes of a particular

1 harvest in a particular region of production.

2 "Wine" means any alcoholic beverage obtained by the natural
3 fermentation of the natural content of grapes, other fruits or
4 honey or other agricultural products containing sugar and to which
5 no alcohol has been added and shall include table wine, and shall
6 exclude fortified wine and shall also exclude any product defined
7 as or embraced within the definition of nonintoxicating beer under
8 the provisions of article sixteen, chapter eleven of this code.

9 "Wine specialty shop" means a retailer who shall deal
10 principally in the sale of table wine, nonfortified dessert wines,
11 wine accessories and food or foodstuffs normally associated with
12 wine and: (1) Who shall maintain a representative number of such
13 wines for sale in his or her inventory which are designated by
14 label as varietal wine, vintage, generic and/or according to region
15 of production and the inventory shall contain not less than fifteen
16 percent vintage or vintage-dated wine by actual bottle count; and
17 (2) who, any other provisions of this code to the contrary
18 notwithstanding, may maintain an inventory of port, sherry and
19 Madeira wines having an alcoholic content of not more than
20 twenty-two percent alcohol by volume and which have been matured in
21 wooden barrels or casks.

22 **§60-8-16. Application for license.**

23 (a) Any person desiring a license under this article shall
24 file a written application for a license with the commissioner and
25 in the application shall state under oath:

26 (1) The name of the applicant, including his or her trade name

1 if any, his or her address and the length of his or her residence
2 within this state;

3 (2) The address of the place of business for which the license
4 is desired, or other description that definitely locates it; and
5 that the place of business conforms to all health and fire laws and
6 regulations applicable thereto;

7 (3) The name of the owner of the premises upon which the
8 business is to be conducted and, if the owner is not the applicant,
9 that such applicant is the bona fide lessee of the business;

10 (4) If the application is for a retailer's license, that the
11 applicant is the proprietor or owner of a bona fide grocery store,
12 private wine bed and breakfast, private wine restaurant, private
13 wine spa or wine specialty shop;

14 (5) That the applicant intends to carry on the business
15 authorized by the license for himself or herself or under his or
16 her immediate supervision or direction;

17 (6) That the applicant is a citizen of the United States;

18 (7) That the applicant is an actual bona fide resident of the
19 State of West Virginia, except for those applicants applying for a
20 supplier's license or a direct shipper's license;

21 (8) That the applicant is not less than eighteen years of age;

22 (9) That the applicant has not been convicted of a felony or
23 other crime involving moral turpitude within the three years next
24 preceding the filing of the application; and that he or she has
25 not, within the two years next preceding the filing of the
26 application, been convicted of violating the liquor laws of any

1 state or of the United States;

2 (10) That the applicant has not during the five years next
3 preceding the date of said application had any license revoked
4 under this chapter or under the liquor laws of any other state;

5 (11) If the applicant is a firm, association, ~~or~~ partnership,
6 limited partnership, limited liability company or corporation, the
7 application shall state the matters required in subdivisions (6),
8 (7), (8), (9) and (10), with respect to each of the members
9 thereof, and each of said members must meet all the requirements in
10 said subdivisions;

11 (12) If the applicant is a corporation, organized or
12 authorized to do business in this state, the application shall
13 state the matters required in subdivisions (6), (7), (8), (9) and
14 (10), with respect to each of the officers and directors thereof,
15 and any stockholder owning twenty percent or more of the stock of
16 such corporation and the persons who conduct and manage the
17 licensed premises for the corporation. Each of said individuals
18 must meet all the requirements provided in those subdivisions
19 except that the requirements as to citizenship and residence shall
20 not apply to the officers, directors and stockholders of a
21 corporation applying for a retailer's license; and

22 (13) If the applicant is a trust or has a trust as an owner,
23 the trustees or other persons in active control of the activities
24 of the trust relating to the license shall provide a certification
25 of trust as described in section one thousand thirteen, article
26 ten, chapter forty-four-d of this code. This certification of trust

1 shall include the excerpts described in subsection (e), section one
2 thousand thirteen, article ten, chapter forty-four-d of this code
3 and shall further state, under oath, the names, addresses, Social
4 Security numbers and birth dates of the beneficiaries of the trust
5 and certify that the trustee and beneficiaries are twenty-one years
6 of age or older. If a beneficiary is not twenty-one years of age,
7 the certification of trust must state that the beneficiary's
8 interest in the trust is represented by a trustee, parent or legal
9 guardian who is twenty-one years of age and who will direct all
10 actions on behalf of the beneficiary related to the trust with
11 respect to the distributor until the beneficiary is twenty-one
12 years of age. Any beneficiary who is not twenty-one years of age or
13 older shall have his or her trustee, parent or legal guardian
14 include in the certification of trust and state under oath his or
15 her name, address, social security number and birth date.

16 ~~(13)~~ (14) Any other information that the commissioner may
17 reasonably require.

18 The foregoing statements required in an application ~~shall~~
19 ~~constitute~~ are mandatory prerequisites for the issuance of a
20 license.

21 The application must be verified by the owner, or ~~each member~~
22 ~~of the firm, each partner, if a partnership, each member of the~~
23 ~~governing board, if an association, or each officer and director,~~
24 ~~if a corporation:—~~ Provided, That in the case of a firm,
25 partnership, limited partnership, limited liability company,
26 association or trust, the members, officers, trustees or other

1 persons in active control of the activities of the limited
2 liability company, association or trust relating to the license.

3 The application of a corporation applying for a retailer's license
4 need be verified only by its president or vice president.

5 (b) In the case of an applicant that is a trust or has a trust
6 as an owner, a distributor license may be issued only upon
7 submission by the trustees or other persons in active control of
8 the activities of the trust relating to the distributor license of
9 a true and correct copy of the written trust instrument to the
10 commissioner for his or her review. Notwithstanding any provision
11 of law to the contrary, the copy of the written trust instrument
12 submitted to the commissioner pursuant to this section is
13 confidential and is not a public record and is not available for
14 release pursuant to the West Virginia Freedom of Information Act
15 codified in article one, chapter twenty-nine-b of this code.

NOTE: The purpose of this bill is to expand the definition of "person" for purposes of holding a wine distributor license. It allows trusts, limited liability companies and associations to hold a distributor's license. It also requires certain disclosures by applicants that are trusts, limited liability companies or associations.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.