

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 435

BY SENATORS LEONHARDT, WALTERS, WILLIAMS, MILLER,

TRUMP, WOELFEL, UNGER AND PLYMALE

[Introduced January 29, 2016;

Referred to the Committee on Agriculture and Rural

Development; and then to the Committee on

Government Organization]

1 A BILL to amend and reenact §60-1-5a of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §60-4-3b of said code; and to amend and reenact §60-8-3 of said code, all
3 relating to permitting farm winery licensure as alternating wine proprietorships; and
4 permitting farm wineries to provide samples and off-premises sales at separately licensed
5 fairs and festivals.

Be it enacted by the Legislature of West Virginia:

1 That §60-1-5a of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that §60-4-3b of said code be amended and reenacted; and that §60-8-3 of said code
3 be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5a. Farm wineries defined.

1 (a) For the purpose of this chapter "farm winery" means an establishment where in any
2 year fifty thousand gallons or less of wine and nonfortified dessert wine are manufactured
3 exclusively by natural fermentation from grapes, other fruits or honey or other agricultural products
4 containing sugar and where port, sherry and Madeira wine may also be manufactured, with
5 twenty-five percent of such raw products being produced by the owner of such farm winery on the
6 premises of that establishment and no more than twenty-five percent of such produce originating
7 from any source outside this state. Any port, sherry or Madeira wine manufactured by a winery or
8 a farm winery must not exceed an alcoholic content of twenty-two percent alcohol by volume and
9 shall be matured in wooden barrels or casks.

10 (b) Notwithstanding the provisions of subsection (a) of this section, a farm winery may
11 include one off-farm location. The owner of a farm winery may provide to the commissioner
12 evidence, accompanied by written findings by the West Virginia Agriculture Commissioner in
13 support thereof, that the owner has planted on the premises of the farm winery young nonbearing
14 fruit plants. The commissioner may grant permission for one off-farm location in an amount equal
15 to that reasonably expected to be produced when the nonbearing fruit plants planted on the farm

16 winery come into full production. The length of time of the permission to use an off-farm location
17 shall be determined by the commissioner after consultation with the Agriculture Commissioner.

18 (c) Notwithstanding the provisions of subsection (a) of this section, a licensed farm winery
19 that meets the requirements in this chapter and who is in good standing with the state may enter
20 into an alternating wine proprietorship agreement with the owner of a farm located in West Virginia
21 to rent or lease wine production facilities, equipment and space including a separately bonded
22 wine area at the existing licensed farm winery's premises. The owner of a farm located in West
23 Virginia entering the alternating wine proprietorship agreement must be currently producing
24 grapes, other fruits or honey or other agricultural products containing sugar as certified by the
25 West Virginia Agriculture Commissioner at its farm located in West Virginia. The owner of a farm
26 located in West Virginia renting or leasing wine production facilities, equipment and space, as a
27 tenant of a licensed farm winery must separately meet federal requirements and state
28 requirements for a winery or farm winery and qualify and obtain such licensure. Further, no wine
29 produced by any of the parties to an alternating wine proprietorship agreement may be
30 commingled and also the wine must be maintained in separate bonded areas and storage that is
31 sanitary. The parties to an alternating wine proprietorship agreement must maintain separate
32 businesses, produce wine separately from each entity and may not assist the other parties. The
33 owner of a farm located in West Virginia that is a party to an alternating wine proprietorship
34 agreement may only produce in any year fifty thousand gallons or less of wine and nonfortified
35 dessert wine manufactured exclusively by natural fermentation from grapes, other fruits or honey
36 or other agricultural products containing sugar and where port, sherry and Madeira wine may also
37 be manufactured, with twenty-five percent of such raw products being produced by the owner of
38 such farm on its farm location premises in West Virginia and no more than twenty-five percent of
39 such produce originating from any source outside this state. Any port, sherry or Madeira wine
40 manufactured by a licensed winery, farm winery or farm with a validly entered alternating wine
41 proprietorship agreement must not exceed an alcoholic content of twenty-two percent alcohol by

42 volume and shall be matured in wooden barrels or casks. A farm and farm owner that is a party
43 to an alternating wine proprietorship agreement and licensed pursuant to this subsection must
44 obtain licensure as a farm winery and must meet the same requirements in the code and the
45 rules, except where noted. A licensed farm winery may enter into multiple alternating wine
46 proprietorship agreements with separate owners of farms located in West Virginia subject to the
47 requirements of the code and the rules, and must also have the requisite production facilities,
48 equipment and space to safely produce wine for all parties.

49 (d) Notwithstanding the provisions of subsection (a) of this section, alternating wine
50 proprietorship agreements in subsection (c) of this section may also be entered into by two or
51 more separate owners of farms located in West Virginia to co-own and share the use of wine
52 production facilities, equipment and space including a separately bonded wine area for each
53 owner of a farm located in West Virginia. The two or more farms entering the alternating wine
54 proprietorship agreement must all be located in West Virginia and must be currently producing
55 grapes, other fruits or honey or other agricultural products containing sugar as certified by the
56 West Virginia Agriculture Commissioner at the farms located in West Virginia. The farm owners,
57 their farms located in West Virginia and the premises where the wine will be manufactured must
58 be located in West Virginia and must each separately meet federal requirements and state
59 requirements for a winery or farm winery. Further, no wine produced by any of the parties to an
60 alternating wine proprietorship agreement may be commingled and also the wine must be
61 maintained in separate bonded areas and storage that is sanitary. The parties to an alternating
62 wine proprietorship agreement must maintain separate businesses, produce wine separately from
63 each entity and may not assist the other parties. The owners of farms located in West Virginia
64 that are parties to the alternating wine proprietorship agreement may each only produce in any
65 year fifty thousand gallons or less of wine and nonfortified dessert wine manufactured exclusively
66 by natural fermentation from grapes, other fruits or honey or other agricultural products containing
67 sugar and where port, sherry and Madeira wine may also be manufactured, with twenty-five

68 percent of such raw products being produced by the owner of such farms at their farm premises
69 located in West Virginia and no more than twenty-five percent of such produce originating from
70 any source outside this state. Any port, sherry or Madeira wine manufactured by a licensed
71 winery, farm winery or farm with a validly entered alternating wine proprietorship agreement must
72 not exceed an alcoholic content of twenty-two percent alcohol by volume and shall be matured in
73 wooden barrels or casks. Farms and farm owners that are a party to an alternating wine
74 proprietorship agreement and licensed pursuant to this subsection must each obtain licensure as
75 a farm winery and must meet the same requirements in the code and the rules, except where
76 noted. Owners of farms located in West Virginia that obtain licensure as farm wineries and who
77 are parties to a valid alternating wine proprietorship agreement to co-own or share facilities are
78 subject to the requirements of the code and the rules and must also have the requisite production
79 facilities, equipment and space to safely produce wine for all parties to the alternating wine
80 proprietorship agreement.

81 (e) The commissioner shall propose legislative rules for legislative approval in accordance
82 with article three, chapter twenty-nine-a of this code as are necessary to implement this section.

ARTICLE 4. LICENSES.

§60-4-3b. Winery and farm winery license to manufacture and sell.

1 (a) *Sales of wine.* — An operator of a winery or farm winery may offer wine produced by
2 the winery or farm winery for retail sale to customers from the winery, ~~or farm winery~~ or a farm
3 winery's licensed farm location in West Virginia provided in subsections (c) and (d), section five-
4 a, article one of this chapter for consumption off the premises only. Except for free complimentary
5 samples, no more than three samples per patron and no greater, in volume, than one fluid ounce
6 per sample, offered pursuant to section one, article six of this chapter, customers are prohibited
7 from consuming any wine on the premises of the winery, ~~or farm winery~~ or farm winery's licensed
8 farm location in West Virginia provided in subsections (c) and (d), section five-a, article one of this
9 chapter unless such winery or farm winery has obtained a multicapacity winery or farm winery

10 license.

11 (b) *Retail sales.* — Every licensed winery or farm winery shall comply with the provisions
12 of articles three, four and eight of this chapter as applicable to wine retailers, wineries and
13 suppliers when properly licensed in such capacities.

14 (c) *Payment of taxes and fees.* — The winery or farm winery shall pay all taxes and fees
15 required of licensed wine retailers and meet applicable licensing provisions as required by this
16 chapter and by rule of the commissioner. Each winery or farm winery acting as its own supplier
17 shall submit to the Tax Commissioner the liter tax for all sales at the winery or farm winery each
18 month, as provided in article eight of this chapter.

19 (d) *Advertising.* — A winery or farm winery may advertise a particular brand or brands of
20 wine produced by it, and the price of the wine subject to federal requirements or restrictions.

21 (e) *Limitations on licensees.* — A winery or farm winery must maintain separate winery or
22 farm winery supplier, retailer and direct shipper licenses when acting in one or more of those
23 capacities and must pay all associated license fees, unless such winery or farm winery holds a
24 license issued pursuant to the provisions of subdivision (12), subsection (b), section three, article
25 eight of this chapter. A winery or farm winery, if holding the appropriate licenses or a multicapacity
26 winery or farm winery license, may act as its own supplier; retailer for off-premises consumption
27 of its wine as specified in section two, article six of this chapter; private wine restaurant; and direct
28 shipper for wine produced by the winery or farm winery. All wineries must use a distributor to
29 distribute and sell their wine in the state, except for farm wineries. No more than one winery or
30 farm winery license may be issued to a single person or entity, and no person may hold both a
31 winery and a farm winery license. Farm wineries may enter alternating wine proprietorship
32 agreements pursuant to section five-a, article one of this chapter.

ARTICLE 8. SALE OF WINES.

§60-8-3. Licenses; fees; general restrictions.

1 (a) No person may engage in business in the capacity of a winery, farm winery, supplier,

2 distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine spa or
3 wine specialty shop without first obtaining a license from the commissioner, nor shall a person
4 continue to engage in any activity after his or her license has expired, been suspended or revoked.
5 No person may be licensed simultaneously as a distributor and a retailer. No person, except for
6 a winery or farm winery, may be licensed simultaneously as a supplier and a retailer. No person
7 may be licensed simultaneously as a supplier and a private wine bed and breakfast, private wine
8 restaurant or a private wine spa. No person may be licensed simultaneously as a distributor and
9 a private wine bed and breakfast, a private wine restaurant or a private wine spa. No person may
10 be licensed simultaneously as a retailer and a private wine bed and breakfast, a private wine
11 restaurant or a private wine spa.

12 (b) The commissioner shall collect an annual fee for licenses issued under this article as
13 follows:

14 (1) One hundred fifty dollars per year for a supplier=s license;

15 (2) Twenty-five hundred dollars per year for a distributor=s license and each separate
16 warehouse or other facility from which a distributor sells, transfers or delivers wine shall be
17 separately licensed and there shall be collected with respect to each location the annual license
18 fee of \$2,500 as herein provided;

19 (3) One hundred fifty dollars per year for a retailer=s license;

20 (4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any
21 other licensing fees paid by a winery or retailer holding a license, except for the amount of the
22 license fee and the restriction to sales of winery or farm winery wines, a winery or farm winery
23 acting as a wine specialty shop retailer is subject to all other provisions of this article which are
24 applicable to a wine specialty shop retailer as defined in section two of this article;

25 (5) One hundred fifty dollars per year for a wine tasting license;

26 (6) One hundred fifty dollars per year for a private wine bed and breakfast license and
27 each separate bed and breakfast from which a licensee sells wine shall be separately licensed
28 and there shall be collected with respect to each location the annual license fee of \$150 as herein
29 provided;

30 (7) Two hundred fifty dollars per year for a private wine restaurant license and each
31 separate restaurant from which a licensee sells wine shall be separately licensed and there shall
32 be collected with respect to each location the annual license fee of \$250 as herein provided;

33 (8) One hundred fifty dollars per year for a private wine spa license and each separate
34 private wine spa from which a licensee sells wine shall be separately licensed and there shall be
35 collected with respect to each location the annual license fee of \$150 as herein provided;

36 (9) One hundred fifty dollars per year for a wine sampling license issued for a wine
37 specialty shop under subsection (n) of this section;

38 (10) No fee shall be charged for a special one-day license under subsection (p) of this
39 section or for a heritage fair and festival license under subsection (q) of this section; and

40 (11) One hundred fifty dollars per year for a direct shipper=s license for a licensee who
41 sells and ships only wine and \$250 per for a direct shipper=s license who ships and sells wine,
42 nonfortified dessert wine, port, sherry or Madeira wines;

43 (12) Three hundred dollars per year for a multicapacity winery or farm winery license which
44 shall enable the holder to operate as a retailer, wine specialty shop, supplier and direct shipper
45 without obtaining an individual license for each capacity.

46 (c) The license period shall begin on July 1 of each year and end on June 30 of the
47 following year and if granted for a less period, the same shall be computed semiannually in
48 proportion to the remainder of the fiscal year.

49 (d) No retailer may be licensed as a private club as provided by article seven of this

50 chapter, except as provided by subsection (k) of this section.

51 (e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as
52 provided by article sixteen, chapter eleven of this code: *Provided*, That a delicatessen, a caterer
53 or party supply store which is a grocery store as defined in section two of this article and which is
54 licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article:
55 *Provided, however*, That any delicatessen, caterer or party supply store licensed in both
56 capacities must maintain average monthly sales exclusive of sales of wine and nonintoxicating
57 beer which exceed the average monthly sales of nonintoxicating beer.

58 (f) A wine specialty shop under this article may also hold a wine tasting license authorizing
59 the retailer to serve complimentary samples of wine in moderate quantities for tasting. Such wine
60 specialty shop shall organize a wine taster=s club, which has at least fifty duly elected or approved
61 dues-paying members in good standing. Such club shall meet on the wine specialty shop=s
62 premises not more than one time per week and shall either meet at a time when the premises are
63 closed to the general public, or shall meet in a separate segregated facility on the premises to
64 which the general public is not admitted. Attendance at tastings shall be limited to duly elected or
65 approved dues-paying members and their guests.

66 (g) A retailer who has more than one place of retail business shall obtain a license for
67 each separate retail establishment. A retailer=s license may be issued only to the proprietor or
68 owner of a bona fide grocery store or wine specialty shop.

69 (h) (A) The commissioner may issue a ~~special~~ license for the retail sale of wine at any
70 festival or fair which is endorsed or sponsored by the governing body of a municipality or a county
71 commission. Such ~~special~~ license shall be issued for a term of no longer than ten consecutive
72 days and the fee therefor shall be is \$250 regardless of the term of the license ~~unless the applicant~~
73 ~~is the manufacturer of said wine on a winery or a farm winery as defined in section five-a, article~~

74 ~~one of this chapter, in which event the fee shall be \$50 if the event is held on the premises of the~~
75 ~~winery or farm winery.~~ The application for the license shall contain information as the
76 commissioner may reasonably require and shall be submitted to the commissioner at least thirty
77 days prior to the first day when wine is to be sold at the festival or fair.

78 (B) Notwithstanding subdivision (a) of this subsection, if the applicant for the festival or fair
79 license is the manufacturer of said wine, a winery or a farm winery as defined in section five-a,
80 article one of this chapter, and the event is located on the premises of a winery or a farm winery,
81 then the fee is \$50.

82 (C) A licensed winery or a farm winery licensed under this subsection who has the festival
83 or fair licensee's written authorization and approval from the commissioner may, in addition to or
84 in conjunction with the festival and fair licensee exhibit, conduct complimentary tastings or sell
85 samples, not to exceed a reasonable serving of three, one fluid ounces, tastings or samples per
86 patron and may sell wine samples for consumption on the premises during the operation of a
87 festival or fair only; and may sell wine for off-premises consumption: Provided, That for licensed
88 wineries or farm wineries at a licensed festival or fair the tastings, samples and off-premises sales
89 shall occur under the hours of operation as required in this article, except that on Sunday tastings,
90 samples and off-premises sales are unlawful between the hours of 2:00 a. m. and 10:00 a. m.

91 (D) A special festival or fair license for a license fee of \$250 may be issued other than to
92 a winery or a farm winery may be issued to a Awine club@ as defined herein below. The festival
93 or fair committee or the governing body shall designate a person to organize a club under a name
94 which includes the name of the festival or fair and the words Awine club@. The license shall be
95 issued in the name of the wine club. A licensee may not commence the sale of wine as provided
96 in this subsection until the wine club has at least fifty dues-paying members who have been
97 enrolled and to whom membership cards have been issued. Thereafter, new members may be

98 enrolled and issued membership cards at any time during the period for which the license is
99 issued. A wine club licensed under the provisions of this subsection may sell wine only to its
100 members, and in portions not to exceed eight ounces per serving. The sales shall take place on
101 premises or in an area cordoned or segregated so as to be closed to the general public, and the
102 general public shall not be admitted to the premises or area. A wine club licensee under the
103 provisions of this subsection shall be authorized to serve complimentary samples of wine in
104 moderate quantities for tasting.

105 (E) A license or farm winery approval to attend a festival or fair issued under the provisions
106 of this ~~subsection~~ section and the licensee holding the license or the licensed winery or farm
107 winery approved to attend a licensed festival or fair shall be subject to all other provisions of this
108 article and the rules and orders of the commissioner relating to the special license: *Provided*, That
109 the commissioner may by rule, regulation or order provide for certain waivers or exceptions with
110 respect to the provisions, rules, regulations or orders as the circumstances of each festival or fair
111 may require, including, without limitation, the right to revoke or suspend any license issued
112 pursuant to this section prior to any notice or hearing notwithstanding the provisions of sections
113 twenty-seven and twenty-eight of this article: *Provided, however*, That under no circumstances
114 shall the provisions of subsection (c) or (d), section twenty of this article be waived nor shall any
115 exception be granted with respect thereto.

116 (F) A license issued under the provisions of this subsection and the licensee holding the
117 license is not subject to the provisions of subsection (g) of this section.

118 (i) (A) The commissioner may issue a special license for the retail sale of wine in a
119 professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles
120 the licensee to sell and serve wine for consumption in a professional baseball stadium. For the
121 purpose of this subsection, "professional baseball stadium" means a facility constructed primarily
122 for the use of a major or minor league baseball franchisee affiliated with the National Association

123 of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league
124 baseball park. Any special license issued pursuant to this subsection shall be for a term beginning
125 on the date of issuance and ending on the next following June 30 and its fee is \$250 regardless
126 of the length of the term of the license. The application for the special license shall contain
127 information as the commissioner may reasonably require and must be submitted to the
128 commissioner at least thirty days prior to the first day when wine is to be sold at the professional
129 baseball stadium. The special license may be issued in the name of the baseball franchisee or
130 the name of the primary food and beverage vendor under contract with the baseball franchisee.
131 These sales must take place within the confines of the professional baseball stadium, provided
132 that the exterior of the area where wine sales may occur are surrounded by a fence or other
133 barrier prohibiting entry except upon the franchisee=s express permission, and under the
134 conditions and restrictions established by the franchisee, so that the wine sales area is closed to
135 free and unrestricted entry by the general public.

136 (B) A license issued under this subsection and the licensee holding the license is subject
137 to all other provisions of this article and the rules and orders of the commissioner relating to the
138 special license: *Provided*, That the commissioner may by rule or order grant certain waivers or
139 exceptions to those rules or orders as the circumstances of each professional baseball stadium
140 may require, including, without limitation, the right to revoke or suspend any license issued
141 pursuant to this section prior to any notice or hearing notwithstanding sections twenty-seven and
142 twenty-eight of this article: *Provided, however*, That under no circumstances may subsection (c)
143 or (d), section twenty of this article be waived nor shall any exception be granted concerning those
144 subsections.

145 (C) The commissioner has the authority to propose rules for legislative approval in
146 accordance with article three, chapter twenty-nine-a of this code to implement this subsection.

147 (j) A license to sell wine granted to a private wine bed and breakfast, private wine
148 restaurant, private wine spa or a private club under the provisions of this article entitles the
149 operator to sell and serve wine, for consumption on the premises of the licensee, when the sale
150 accompanies the serving of food or a meal to its members and their guests in accordance with
151 the provisions of this article: *Provided*, That a licensed private wine bed and breakfast, private
152 wine restaurant, private wine spa or a private club may permit a person over twenty-one years of
153 age to purchase wine, consume wine and recork or reseal, using a tamper resistant cork or seal,
154 up to two separate bottles of unconsumed wine in conjunction with serving of food or a meal to
155 its members and their guests in accordance with the provisions of this article and in accordance
156 with regulations promulgated by the commissioner for the purpose of consumption of said wine
157 off premises: *Provided, however*, That for this article, food or a meal provided by the private
158 licensee means that the total food purchase, excluding beverage purchases, taxes, gratuity or
159 other fees is at least \$15: *Provided further*, That a licensed private wine restaurant or a private
160 club may offer for sale for consumption off the premises, sealed bottles of wine to its customers
161 provided that no more than one bottle is sold per each person over twenty-one years of age, as
162 verified by the private wine restaurant or private club, for consumption off the premises. Such
163 licensees are authorized to keep and maintain on their premises a supply of wine in quantities as
164 may be appropriate for the conduct of operations thereof. Any sale of wine so made shall be
165 subject to all restrictions set forth in section twenty of this article. A private wine restaurant may
166 also be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen,
167 chapter eleven of this code.

168 (k) With respect to subsections (h), (i), (j), (o) and (p) of this section, the commissioner
169 shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of
170 this code with regard to the form of the applications, the suitability of both the applicant and
171 location of the licensed premises and other legislative rules deemed necessary to carry the

172 provisions of said subsections into effect.

173 (l) The commissioner shall promulgate legislative rules in accordance with the provisions
174 of chapter twenty-nine-a of this code to allow restaurants to serve wine with meals, and to sell
175 wine by the bottle for off-premises consumption as provided in subsection (j) of this section. Each
176 restaurant so licensed shall be charged an additional \$100 per year fee.

177 (m) The commissioner shall establish guidelines to permit wines to be sold in all stores
178 licensed for retail sales.

179 (n) Wineries and farm wineries may advertise off premises as provided in section seven,
180 article twenty-two, chapter seventeen of this code.

181 (o) A wine specialty shop under this article may also hold a wine sampling license
182 authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine
183 specialty shop location during regular hours of business. The wine specialty shop may serve up
184 to three complimentary samples of wine, consisting of no more than one ounce each, to any one
185 consumer in one day. Persons serving the complimentary samples must be twenty-one years of
186 age and an authorized representative of the licensed wine specialty shop, winery, farm winery or
187 a representative of a distributor or registered supplier. Distributor and supplier representatives
188 attending wine sampling events must be registered with the commissioner. No licensee, employee
189 or representative may furnish, give or serve complimentary samples of wine to any person less
190 than twenty-one years of age or to a person who is physically incapacitated due to the
191 consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and
192 secure permission from the commissioner for all wine sampling events one month prior to the
193 event. Wine sampling events may not exceed six hours per calendar day. Licensees must
194 purchase all wines used during these events from a licensed farm winery or a licensed distributor.

195 (p) The commissioner may issue special one-day licenses to duly organized, nonprofit
196 corporations and associations allowing the sale and serving of wine when raising money for

197 athletic, charitable, educational or religious purposes. The license application shall contain
198 information as the commissioner may reasonably require and shall be submitted to the
199 commissioner at least thirty days prior to the event. Wines used during these events may be
200 donated by or purchased from a licensed retailer, a distributor or a farm winery. A licensed farm
201 winery that: Is authorized in writing by a representative of the duly organized, nonprofit corporation
202 and association which has obtained the one-day license; is in good standing with the state; and
203 obtains the commissioner's approval prior to the one-day license event may, in addition to or in
204 conjunction with the one-day licensee, exhibit, conduct complimentary tastings or sell samples
205 not to exceed a reasonable serving of three, one fluid ounces, tastings or samples per patron, for
206 consumption on the premises during the operation of the one-day license event; and may sell
207 wine for off-premises consumption: *Provided*, That for a licensed farm winery at a licensed one-
208 day event the tastings, samples and off-premises sales shall occur under the hours of operation
209 as required in this article, except on Sunday, tastings, samples and off-premises sales are
210 unlawful between the hours of 2:00 a.m. and 10:00 a.m., from the one-day licensee's submitted
211 floor plan for the event subject to the requirements in the code and rules. Under no circumstances
212 may the provisions of ~~subsections~~ subsection (c) or (f), section twenty of this article be waived
213 nor may any exception be granted with respect thereto.

214 (q) The commissioner may issue special licenses to heritage fairs and festivals allowing
215 the sale, serving and sampling of wine from a licensed farm winery. The license application shall
216 contain information required by the commissioner and shall be submitted to the commissioner at
217 least thirty days prior to the event. Wines used during these events may be donated by or
218 purchased from a licensed farm winery. Under no circumstances may the provision of subsection
219 (c), section twenty of this article be waived nor may any exception be granted with respect thereto.
220 The commissioner shall propose rules for legislative approval in accordance with article three,
221 chapter twenty-nine-a of this code to implement the provisions of this subsection.

222 (r)(1) The commissioner may issue a special license for the retail sale of wine in a college
223 stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and
224 serve wine for consumption in a college stadium. For the purpose of this subsection, Acollege
225 stadium@ means a facility constructed primarily for the use of a Division I college that is a member
226 of the National Collegiate Athletic Association, or its successor, and used as a football, basketball,
227 baseball, soccer or other Division I sports stadium. A special license issued pursuant to this
228 subsection shall be for a term beginning on the date of its issuance and ending on the next
229 following June 30 and its fee is \$250 regardless of the length of the term of the license. The
230 application for the special license shall contain information as the commissioner may reasonably
231 require and must be submitted to the commissioner at least thirty days prior to the first day when
232 wine is to be sold. The special license may be issued in the name of the National Collegiate
233 Athletic Association Division I college or university or the name of the primary food and beverage
234 vendor under contract with that college or university. These sales must take place within the
235 confines of the college stadium: *Provided*, That the exterior of the area where wine sales may
236 occur are surrounded by a fence or other barrier prohibiting entry except upon the college or
237 university=s express permission, and under the conditions and restrictions established by the
238 college or university, so that the wine sales area is closed to free and unrestricted entry by the
239 general public.

240 (2) A license issued under this subsection and the licensee are subject to the other
241 requirements of this article and the rules and orders of the commissioner relating to the special
242 license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions
243 to those rules or orders as the circumstances of each the college stadium may require, including,
244 without limitation, the right to revoke or suspend any license issued pursuant to this section prior
245 to any notice or hearing notwithstanding sections twenty-seven and twenty-eight of this article:

246 *Provided, however,* That subsection (c) or (d), section twenty of this article may not be waived,
247 nor shall any exception be granted concerning those subsections.

248 (3) The commissioner may propose rules for legislative approval in accordance with article
249 three, chapter twenty-nine-a of this code to implement this subsection.

NOTE: The purpose of this bill is to permit a farm winery to enter alternating wine proprietorship agreements with farm owners located in West Virginia who obtain licensure as a farm winery and rent or lease space from the established farm winery who owns wine production facilities, equipment and separately bonded wine areas and other space for the safe and sanitary manufacture of wine. Licensed farm wineries, with approval, may also attend licensed festivals and fairs and conduct tastings and sell samples up to three samples, one fluid ounce, per patron and sell bottles for off-premises consumption by patrons.

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