

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 3102

BY DELEGATES ESPINOSA, COWLES, SUMMERS,

HOUSEHOLDER AND WESTFALL

[Introduced February 12, 2019; Referred
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; to amend and reenact §60-6-8 of said code; and to
3 amend and reenact §60-8-3, §60-8-17 and §60-8-20 of said code, all relating to creating
4 alternating wine proprietorships for wineries and farm wineries; clarifying sampling
5 procedures and requirements for wineries and farm wineries; permitting certain charitable
6 events to auction wine bottles for off-premises consumption; clarifying alcoholic liquors
7 are sold by the drink in certain Class A licenses; stating when lawful to conduct wine bottle
8 sales in certain Class A licenses; permitting the sale of wine in Division II and III college
9 stadiums; providing a 30-day requirement to issue or deny a completed license
10 application; and creating a re-activation fee for licensees that fail to timely file their renewal
11 applications and pay their license fees.

Be it enacted by the Legislature of West Virginia:

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 50,000 gallons or less of wine and nonfortified dessert wine are manufactured exclusively
3 by natural fermentation from grapes, other fruits or honey, or other agricultural products containing
4 sugar and where port, sherry, and Madeira wine may also be manufactured, with 25 percent of
5 such raw products being produced by the owner of such farm winery on the premises of that
6 establishment and no more than 25 percent of such produce originating from any source outside
7 this state. Any port, sherry, or Madeira wine manufactured by a winery or a farm winery must not
8 exceed an alcoholic content of 22 percent alcohol by volume and shall be matured in wooden
9 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 shall 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 50,000 gallons or less of wine and nonfortified dessert
35 wine manufactured exclusively by natural fermentation from grapes, other fruits or honey, or other
36 agricultural products containing sugar and where port, sherry and Madeira wine may also be
37 manufactured, with 25 percent of such raw products being produced by the owner of such farm
38 on its farm location premises in West Virginia and no more than 25 percent of such produce

39 originating from any source outside this state. Any port, sherry, or Madeira wine manufactured by
40 a licensed winery, farm winery or farm with a validly entered alternating wine proprietorship
41 agreement must not exceed an alcoholic content of 22 percent alcohol by volume and shall be
42 matured in wooden barrels or casks. A farm and farm owner that is a party to an alternating wine
43 proprietorship agreement and licensed pursuant to this subsection must obtain licensure as a
44 farm winery and must meet the same requirements in the code and the rules, except where noted.
45 A licensed farm winery may enter into multiple alternating wine proprietorship agreements with
46 separate owners of farms located in West Virginia subject to the requirements of the code and
47 the rules, and must also have the requisite production facilities, equipment and space to safely
48 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 shall 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 50,000 gallons or less of wine and nonfortified dessert wine manufactured exclusively by
66 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 25 percent of
68 such raw products being produced by the owner of such farms at their farm premises located in
69 West Virginia and no more than 25 percent of such produce originating from any source outside
70 this state. Any port, sherry, or Madeira wine manufactured by a licensed winery, farm winery or
71 farm with a validly entered alternating wine proprietorship agreement must not exceed an
72 alcoholic content of 22 percent alcohol by volume and shall be matured in wooden barrels or
73 casks. Farms and farm owners that are a party to an alternating wine proprietorship agreement
74 and licensed pursuant to this subsection must each obtain licensure as a farm winery and must
75 meet the same requirements in the code and the rules, except where noted. Owners of farms
76 located in West Virginia that obtain licensure as farm wineries and who are parties to a valid
77 alternating wine proprietorship agreement to co-own or share facilities are subject to the
78 requirements of the code and the rules and must also have the requisite production facilities,
79 equipment, and space to safely produce wine for all parties to the alternating wine proprietorship
80 agreement.

81 (e) The commissioner shall promulgate rules necessary to effectuate the requirements of
82 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 per §60-1-5a(c) and §60-1-5a(d) of this code for
4 consumption off the premises only. Except for free complimentary samples, no more than three
5 complimentary samples per patron and no greater, in volume, than 2 fluid ounces per such
6 sample, offered pursuant to §60-6-1 of this code, customers are prohibited from consuming any

7 wine on the premises of the winery, ~~or farm winery~~ or farm winery's licensed farm location in West
8 Virginia per §60-1-5a(c) and §60-1-5a(d) of this code, unless such winery or farm winery has
9 obtained a multicapacity winery or farm winery license: *Provided*, That a licensed winery or farm
10 winery may offer complimentary samples per this subsection of wine manufactured by that
11 licensed winery or farm winery for consumption on premises only; offer for the retail sale of sealed
12 original container bottles of wine to customers for consumption off premises only; and may offer
13 wine by the drink or glass for sale to customers for any such licensed winery or farm winery who
14 has qualified, paid the license fee, and obtained a multi-capacity license, along with separately
15 being licensed as a private wine restaurant that is located on its winery or farm winery's licensed
16 premises, for consumption on the premises only on Sundays beginning at 10:00 a.m. in any
17 county in which the same has been approved as provided in ~~§7-1-3pp~~ §7-1-3ss of this code.

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

21 (c) *Payment of taxes and fees.* —

22 (1) The winery or farm winery shall pay all taxes and fees required of licensed wine
23 retailers and meet applicable licensing provisions as required by this chapter and by rule of the
24 commissioner.

25 (2) Each winery or farm winery acting as its own supplier shall submit to the Tax
26 Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in
27 article eight of this chapter.

28 (3) The five percent wine excise tax, levied pursuant to §60-3-9d of this code or pursuant
29 to §8-13-7 of this code, may not be imposed or collected on purchases of wine in the original
30 sealed package for the purpose of resale in the original sealed package if the final purchase of
31 such wine is subject to the excise tax or if the purchase is delivered outside this state.

32 (4) No liter tax shall be collected on wine sold in the original sealed package for the
33 purpose of resale in the original sealed package if a subsequent sale of such wine is subject to
34 the liter tax.

35 (5) This section shall not be interpreted to authorize a purchase for resale exemption in
36 contravention of §11-15-9a of this code.

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

39 (e) *Limitations on licensees.* — A winery or farm winery must maintain separate winery or
40 farm winery supplier, retailer and direct shipper licenses when acting in one or more of those
41 capacities and must pay all associated license fees, unless such winery or farm winery holds a
42 license issued pursuant to the provisions §60-8-3-(b)(12) of this code. A winery or farm winery, if
43 holding the appropriate licenses or a multicapacity winery or farm winery license, may act as its
44 own supplier; retailer for off-premises consumption of its wine as specified in section two, article
45 six of this chapter; private wine restaurant; and direct shipper for wine produced by the winery or
46 farm winery. All wineries must use a distributor to distribute and sell their wine in the state, except
47 for farm wineries. No more than one winery or farm winery license may be issued to a single
48 person or entity and no person may hold both a winery and a farm winery license. Farm wineries
49 may enter into alternating wine proprietorship agreements pursuant to §60-1-5a of this code.

50 (f) For purposes of this section, terms will have the same meaning, where applicable, as
51 provided in §8-13-7(b) of this code, otherwise the meaning shall be applied from §60-1-1 et seq.
52 of this code.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-8. Unlawful sale or possession by licensee.

1 A licensed person shall not:

2 (1) Sell alcoholic liquors of a kind other than that which such license or this chapter
3 authorizes him or her to sell;

4 (2) Sell beer to which wine, spirits, or alcohol has been added;

5 (3) Sell wine to which other alcoholic spirits have been added, otherwise than as required
6 in the manufacture thereof under regulations of the commission;

7 (4) Sell alcoholic liquors to a person specified in §60-3-22 of this code;

8 (5) Sell alcoholic liquors except as authorized by his or her license, such as, Class A
9 licensees licensed by §60-7-1 et seq., and §60-8-1 et seq., of this code for on premises
10 consumption shall only sell or serve alcoholic liquors by the drink poured by the licensee directly
11 from the original container at the time of ordering and service of a drink, and no original container
12 or bottle sales are permitted, except for Class A licensees licensed authorized by §60-7-1 et seq.,
13 and §60-8-1 et seq., of this code who may, when selling or serving only wine accompanied with
14 freshly prepared food or meals in excess of \$15, permit wine bottle service at a dining table
15 comprised of two or more patrons, ages 21 years of age or older, consuming such meal with the
16 table served wine bottle;

17 (6) Sell any alcoholic liquor when forbidden by the provisions of this chapter;

18 (7) Sell, possess, possess for sale, furnish or provide any powdered alcohol;

19 (8) Keep on the premises covered by his or her license alcoholic liquor other than that
20 which he or she is authorized to sell by such license or by this chapter.

21 A person who violates any provision of this section shall be guilty of a misdemeanor and,
22 upon conviction shall be fined not less than \$50 nor more than \$500, or confined in jail not less
23 than thirty days nor more than one year, or both such fine and imprisonment for the first offense.
24 ~~Upon conviction of a second or subsequent offense, the court may in its discretion impose a~~
25 ~~penalty of confinement in the penitentiary for a period not to exceed three years~~ A person who
26 violates any provision of this section for the second or any subsequent offense under this section,
27 is guilty of a felony, and upon conviction thereof, shall be imprisoned in a state correction facility
28 for a period not to exceed three years.

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 §60-8-2 of this code;

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;

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; and

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 §60-7-1 *et seq.*, except
50 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 §11-16-1 *et seq.* of this code: *Provided*, That a delicatessen, a caterer or party supply
53 store which is a grocery store as defined in section two of this article and which is licensed as a
54 Class A retail dealer in nonintoxicating beer may be a retailer under this article: *Provided*,
55 *however*, That any delicatessen, caterer or party supply store licensed in both capacities must
56 maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which exceed
57 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 50 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 10 consecutive
72 days and the fee therefor shall be \$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 30
77 days prior to the first day when wine is to be sold at the festival or fair.

78 (B) Notwithstanding subdivision (h)(A) of this section, 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 §60-1-5a of this
80 code, and the event is located on the premises of a winery or a farm winery then the license fee
81 shall be \$50 per festival or fair.

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, 2 fluid ounces, and may sell wine samples
86 tastings or samples per patron, for consumption on the premises during the operation of a festival
87 or fair only; and may sell wine for off-premises consumption only; 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, but may be issued to a "wine 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 "wine 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 50 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. Such a wine club shall not be permitted to make wine purchases
105 from a direct shipper where such wine may be consumed on the licensed premises of any Class.
106 A private wine retail license or private club, and further shall be subject to the penalties in this
107 article.

108 (E) A ~~license~~ licensed winery or farm winery approved to attend a festival or fair license
109 issued under the provisions of this ~~subsection~~ section and the licensee holding the license, or the
110 licensed winery or farm winery approved to attend a licensed festival or fair, shall be subject to all
111 other provisions of this article and the rules and orders of the commissioner relating to the special
112 license: *Provided*, That the commissioner may by rule, regulation, or order provide for certain
113 waivers or exceptions with respect to the provisions, rules, regulations or orders as the
114 circumstances of each festival or fair may require, including, without limitation, the right to revoke
115 or suspend any license issued pursuant to this section prior to any notice or hearing
116 notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That
117 under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived
118 nor shall any exception be granted with respect thereto.

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

121 (i) (A) The commissioner may issue a special license for the retail sale of wine in a
122 professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles
123 the licensee to sell and serve wine, for consumption in a professional baseball stadium. For the
124 purpose of this subsection, "professional baseball stadium" means a facility constructed primarily
125 for the use of a major or minor league baseball franchisee affiliated with the National Association
126 of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league
127 baseball park. Any special license issued pursuant to this subsection shall be for a term beginning

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

139 (B) A license issued under this subsection and the licensee holding the license is subject
140 to all other provisions of this article and the rules and orders of the commissioner relating to the
141 special license: *Provided*, That the commissioner may by rule or order grant certain waivers or
142 exceptions to those rules or orders as the circumstances of each professional baseball stadium
143 may require, including, without limitation, the right to revoke or suspend any license issued
144 pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of
145 this code: *Provided, however*, That under no circumstances may §60-8-20(c) or §60-8-20(d) of
146 this code be waived nor shall any exception be granted concerning those subsections.

147 (C) The commissioner has the authority to propose rules for legislative approval in
148 accordance with §29A-3-1 *et seq.*, of this code to implement this subsection.

149 (j) A license to sell wine granted to a private wine bed and breakfast, private wine
150 restaurant, private wine spa, or a private club under the provisions of this article entitles the
151 operator to sell and serve wine, for consumption on the premises of the licensee, when the sale
152 accompanies the serving of food or a meal to its members and their guests in accordance with
153 the provisions of this article: *Provided*, That a licensed private wine bed and breakfast, private

154 wine restaurant, private wine spa, or a private club may permit a person over 21 years of age to
155 purchase wine, consume wine and recork or reseal, using a tamper resistant cork or seal, up to
156 two separate bottles of unconsumed wine in conjunction with serving of food or a meal to its
157 members and their guests in accordance with the provisions of this article and in accordance with
158 regulations promulgated by the commissioner for the purpose of consumption of said wine off
159 premises: *Provided, however,* That for this article, food or a meal provided by the private licensee
160 means that the total food purchase, excluding beverage purchases, taxes, gratuity or other fees
161 is at least \$15: *Provided further,* That a licensed private wine restaurant or a private club may
162 offer for sale for consumption off the premises, sealed bottles of wine to its customers provided
163 that no more than one bottle is sold per each person over 21 years of age, as verified by the
164 private wine restaurant or private club, for consumption off the premises. Such licensees are
165 authorized to keep and maintain on their premises a supply of wine in quantities as may be
166 appropriate for the conduct of operations thereof. Any sale of wine so made shall be subject to all
167 restrictions set forth in §60-8-20 of this code. A private wine restaurant may also be licensed as
168 a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code.

169 (k) With respect to subsections (h), (i), (j), (o) and (p) of this section, the commissioner
170 shall promulgate legislative rules in accordance with the provisions of §29A-1-1 *et seq.* of this
171 code with regard to the form of the applications, the suitability of both the applicant and location
172 of the licensed premises and other legislative rules deemed necessary to carry the provisions of
173 the subsections into effect.

174 (l) The commissioner shall promulgate legislative rules in accordance with the provisions
175 of §29A-1-1 *et seq.* of this code to allow restaurants to serve wine with meals, and to sell wine by
176 the bottle for off-premises consumption as provided in subsection (j) of this section. Each
177 restaurant so licensed shall be charged an additional \$100 per year fee.

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

180 (n) Wineries and farm wineries may advertise off premises as provided in §17-22-7 of this
181 code.

182 (o) A wine specialty shop under this article may also hold a wine sampling license
183 authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine
184 specialty shop location during regular hours of business. The wine specialty shop may serve up
185 to three complimentary samples of wine, consisting of no more than ~~one ounce~~ two fluid ounces
186 each, to any one consumer in one day. Persons serving the complimentary samples must be 21
187 years of age and an authorized representative of the licensed wine specialty shop, winery, farm
188 winery or a representative of a distributor or registered supplier. Distributor and supplier
189 representatives attending wine sampling events must be registered with the commissioner. No
190 licensee, employee or representative may furnish, give, sell, or serve complimentary samples of
191 wine to any person less than 21 years of age or to a person who is physically incapacitated due
192 to the consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify
193 and secure permission from the commissioner for all wine sampling events one month prior to the
194 event. Wine sampling events may not exceed six hours per calendar day. Licensees must
195 purchase all wines used during these events from a licensed farm winery or a licensed distributor.

196 (p) The commissioner may issue special one-day licenses to duly organized, nonprofit
197 corporations and associations allowing the sale and serving of wine, and may, if applicable, also
198 allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only,
199 when raising money for athletic, charitable, educational or religious purposes. Auction or
200 auctioning, for this subsection, shall mean any silent, physical act or verbal bid auction, whether
201 or not such auction requires in-presence bidding or online-Internet based electronic bidding
202 through a secure application or website, but shall not include any such action in violation of §47-
203 20-10, §47-20-11 or §61-10-1 et seq. of this code. The license application shall contain
204 information as the commissioner may reasonably require and shall be submitted to the
205 commissioner at least 30 days prior to the event. Wines used during these events may be donated

206 by or purchased from a licensed retailer, a distributor or a farm winery. A licensed farm winery
207 that: Is authorized in writing by a representative of the duly organized, nonprofit corporation and
208 association which has obtained the one-day license; is in good standing with the state; and obtains
209 the commissioner’s approval prior to the one-day license event may, in conjunction with the one-
210 day licensee, exhibit; conduct complimentary tastings or sell samples not to exceed a reasonable
211 serving of three, 2 fluid ounces, tastings or samples per patron, for consumption on the premises
212 during the operation of the one-day license event; and may sell certain sealed wine bottles
213 manufactured by the licensed farm winery for off-premises consumption: *Provided*, That for a
214 licensed farm winery at a licensed one-day event the tastings, samples and off-premises sales
215 shall occur under the hours of operation as required in this article, except on Sunday, tastings,
216 samples and off-premises sales are unlawful between the hours of 2:00 o’clock a.m. and 10:00
217 o’clock a.m., from the one-day licensee’s submitted floor plan for the event subject to the
218 requirements in the code and rules. Under no circumstances may the ~~provision~~ provisions of §60-
219 8-20(c) or §60-8-20(f) of this code be waived nor may any exception be granted with respect
220 thereto.

221 (q) The commissioner may issue special licenses to heritage fairs and festivals allowing
222 the sale, serving, and sampling of wine from a licensed farm winery. The license application shall
223 contain information required by the commissioner and shall be submitted to the commissioner at
224 least 30 days prior to the event. Wines used during these events may be donated by or purchased
225 from a licensed farm winery. Under no circumstances may the provision of §60-8-20(c) of this
226 code be waived nor may any exception be granted with respect thereto. The commissioner shall
227 propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to
228 implement the provisions of this subsection.

229 (r)(1) The commissioner may issue a special license for the retail sale of wine in a college
230 stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and
231 serve wine for consumption in a college stadium. For the purpose of this subsection, “college

232 stadium” means a facility constructed primarily for the use of a Division I, II, or III college that is a
233 member of the National Collegiate Athletic Association, or its successor, and used as a football,
234 basketball, baseball, soccer or other Division I, II or III sports stadium. A special license issued
235 pursuant to this subsection shall be for a term beginning on the date of its issuance and ending
236 on the next following June 30, and its fee is \$250 regardless of the length of the term of the
237 license. The application for the special license shall contain information as the commissioner may
238 reasonably require and must be submitted to the commissioner at least 30 days prior to the first
239 day when wine is to be sold. The special license may be issued in the name of the National
240 Collegiate Athletic Association Division I, II or III college or university or the name of the primary
241 food and beverage vendor under contract with that college or university. These sales must take
242 place within the confines of the college stadium: *Provided*, That the exterior of the area where
243 wine sales may occur are surrounded by a fence or other barrier prohibiting entry except upon
244 the college or university’s express permission, and under the conditions and restrictions
245 established by the college or university, so that the wine sales area is closed to free and
246 unrestricted entry by the general public.

247 (2) A license issued under this subsection and the licensee are subject to the other
248 requirements of this article and the rules and orders of the commissioner relating to the special
249 license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions
250 to those rules or orders as the circumstances of each the college stadium may require, including,
251 without limitation, the right to revoke or immediately suspend any license issued pursuant to this
252 section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code:
253 *Provided, however*, That subsection §60-8-20(c) or §60-8-20(d) of this code may not be waived,
254 nor shall any exception be granted concerning those subsections.

255 (3) The commissioner may propose rules for legislative approval in accordance with §29A-
256 3-1 *et seq.*, of this code to implement this subsection.

§60-8-17. License issuance or refusal; terms of license.

1 (a) Upon receipt of the completed application, fee, and bond if required, the commissioner
2 shall conduct such investigation as he or she may deem necessary to determine the accuracy of
3 the matters contained in the completed application. For the purposes of conducting such
4 investigation, the commissioner may withhold the granting or refusal to grant a license for a period
5 not to exceed 30 days or until the applicant has completed the conditions set forth in §60-8-16 of
6 this code. If it appears that the applicant is a suitable person, is located at a suitable premises
7 and there is no false statement, no material misrepresentations, no hidden ownership, no persons
8 with an undisclosed pecuniary interest contained in ~~the~~ such application along with no other
9 omissions or failures by the applicant to complete the application, all as determined by the
10 commissioner, and that the issuance of the license would not be in conflict with any of the
11 provisions of this chapter, the commissioner shall issue the license, and otherwise shall refuse to
12 issue such license.

13 (b) The commissioner shall refuse the license of any applicant if he or she finds that such
14 applicant is not a suitable person or that the place of business of such applicant is not a suitable
15 place or that such applicant has not complied with the provisions of this chapter. Upon refusal to
16 issue such license, the commissioner shall enter an order refusing such application, which refusal
17 is final unless a hearing is requested in accordance with the provisions of section 18 of this article.
18 When such refusal becomes final the commissioner shall forthwith refund to the applicant his or
19 her fees and bond accompanying said application.

20 (c) Such license shall expire on June 30 next following the date it was issued and may be
21 renewed upon the same showing as required for the issuance of the initial license, together with
22 the payment of fee and filing of any bond required by this article.

23 (d) A licensee that fails to complete a renewal application and make payment of its annual
24 license fee in renewing its license on or before June 30 of any subsequent year, after initial
25 application, shall be charged an additional \$150 reactivation fee. The fee payment may not be
26 prorated or refunded, and must be paid prior to the processing of any renewal application and

27 payment of the applicable full year annual license fee. A licensee who continues to operate upon
28 the expiration of its license is subject to all fines, penalties and sanctions available in §11-16-23
29 of this code, all as determined by the commissioner.

30 ~~(d)~~ (e) Such license shall not be transferred to another person, but the location of the
31 premises to which the license relates may be changed with the written consent of the
32 commissioner if the new location is such as would satisfy the requirements of this article upon an
33 initial application and payment of a new application fee.

§60-8-20. Unlawful acts generally.

1 It shall be unlawful:

2 (a) For a supplier or distributor to sell or deliver wine purchased or acquired from any
3 source other than a person registered under the provisions §60-8-6 of this code or for a retailer
4 to sell or deliver wine purchased or acquired from any source other than a licensed distributor or
5 a farm winery as defined in §60-1-5a of this code;

6 (b) Unless otherwise specifically provided by the provisions of this article, for a licensee
7 under this article to acquire, transport, possess for sale, tender, ~~or~~ sell, or serve wine other than
8 in the original package and by the drink, except as authorized in §60-6-8 of this code;

9 (c) For a licensee, his or her servants, agents or employees to sell, furnish or give wine to
10 any person less than 21 years of age, or to a mental incompetent or person who is physically
11 incapacitated due to the consumption of alcoholic liquor or the use of drugs: *Provided*, That the
12 provisions §60-3A-25a of this code shall apply to sales of wine;

13 (d) For a licensee to permit a person who is less than 18 years of age to sell, furnish, serve
14 or give wine to any person;

15 (e) For a supplier or a distributor to sell or deliver any brand of wine purchased or acquired
16 from any source other than the primary source of supply of the wine which granted the distributor
17 the right to sell the brand at wholesale. For the purposes of this article, “primary source of supply”
18 means the vintner of the wine, the importer of a foreign wine who imports the wine into the United
19 States, the owner of a wine at the time it becomes a marketable product, the bottler of a wine or

20 an agent specifically authorized by any of the above-enumerated persons to make a sale of the
21 wine to a West Virginia distributor: *Provided*, That no retailer shall sell or deliver wine purchased
22 or acquired from any source other than a distributor or farm winery licensed in this state: *Provided*,
23 *however*, That nothing herein is considered to prohibit sales of convenience between distributors
24 licensed in this state wherein one distributor sells, transfers or delivers to another distributor a
25 particular brand or brands for sale at wholesale, of which brand or brands the other distributor has
26 been authorized by a licensed supplier to distribute. The commissioner shall promulgate rules
27 necessary to carry out the provision of this subsection;

28 (f) For a person to violate any reasonable rule promulgated by the commissioner under
29 this article;

30 (g) Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or
31 be considered to prohibit any licensee from employing any person who is at least 18 years of age
32 to serve in any licensee's lawful employment, including the sale, service or delivery of wine under
33 the provisions of this article. With the prior approval of the commissioner, a licensee whose
34 principal business is the sale of food or consumer goods or the providing of recreational activities,
35 including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants,
36 bowling alleys, drug stores, discount stores, grocery stores and convenience stores, may employ
37 persons who are less than 18 years of age but at least 16 years of age: *Provided*, That the
38 person's duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors:
39 *Provided, however*, That the authorization to employ persons under the age of 18 years shall be
40 clearly indicated on the licensee's license.

NOTE: The purpose of this bill is to revise certain wine code sections to permit wine alternating wine proprietorships as permitted under federal law; to clarify wine sampling procedures for wineries and farm wineries up to 2 fluid ounces at certain fairs and festivals along with wine bottle sales for off-premises consumption only; to permit the auction of wine at certain charitable events; to clarify liquor and wine must be sold by the drink at certain on-premises licenses but that wine bottle sales are permitted under certain conditions at certain on-premises locations; to permit Division II and II colleges to apply for private wine stadium licenses; providing a 30 day licensing requirement to issue or deny a license; and to encourage licensees to apply for renewals of their license in a timely and effective manner but if they fail to do so a re-activation fee will be applied prior to their renewal.

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