

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4882**

BY DELEGATES ESPINOSA, BARRETT, COWLES, HARDY,

SPONAUGLE, WILLIAMS AND HOUSEHOLDER

[Introduced February 11, 2020; Referred to the

Committee on Government Organization.]



1 A BILL to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating  
2 to unlicensed wineries not currently licensed or located in West Virginia temporarily  
3 authorizing limited sampling and temporarily authorizing the limited sale of wine for off-  
4 premises consumption at certain fairs and festivals and at certain one-day special licensed  
5 nonprofit events in a very limited capacity, per event, per year, in hopes that such wineries  
6 would eventually obtain a permanent winery or farm winery license in West Virginia.

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

**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  
5 revoked. No person may be licensed simultaneously as a distributor and a retailer. No person,  
6 except for a winery or farm winery, may be licensed simultaneously as a supplier and a retailer.  
7 No person may be licensed simultaneously as a supplier and a private wine bed and breakfast,  
8 private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a  
9 distributor and a private wine bed and breakfast, a private wine restaurant, or a private wine spa.  
10 No person may be licensed simultaneously as a retailer and a private wine bed and breakfast, a  
11 private wine 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) Two thousand five hundred dollars per year for a distributor's license and each  
16 separate warehouse or other facility from which a distributor sells, transfers, or delivers wine shall

17 be separately licensed and there shall be collected with respect to each location the annual  
18 license fee of \$2,500 as provided in this subdivision;

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. Each  
27 separate bed and breakfast from which a licensee sells wine shall be separately licensed and  
28 there shall be collected with respect to each location the annual license fee of \$150 as provided  
29 in this subdivision;

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

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

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

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

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

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

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

50           (d) No retailer may be licensed as a private club as provided by §60-7-1 *et seq.* of this  
51 code, except as provided by subsection (k) of this section.

52           (e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as  
53 provided by §11-16-1 *et seq.* of this code: *Provided*, That a delicatessen, a caterer, or party supply  
54 store which is a grocery store as defined in §60-8-2 of this code and which is licensed as a Class  
55 A retail dealer in nonintoxicating beer may be a retailer under this article: *Provided, however*, That  
56 any delicatessen, caterer, or party supply store licensed in both capacities must maintain average  
57 monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average  
58 monthly sales of nonintoxicating beer.

59           (f) A wine specialty shop under this article may also hold a wine tasting license authorizing  
60 the retailer to serve complimentary samples of wine in moderate quantities for tasting. Such wine  
61 specialty shop shall organize a wine taster's club, which has at least 50 duly elected or approved  
62 dues-paying members in good standing. Such club shall meet on the wine specialty shop's  
63 premises not more than one time per week and shall either meet at a time when the premises are  
64 closed to the general public or shall meet in a separate segregated facility on the premises to  
65 which the general public is not admitted. Attendance at tastings shall be limited to duly elected or  
66 approved dues-paying members and their guests.

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

70 (h)(1) The commissioner may issue a license for the retail sale of wine at any festival or  
71 fair which is endorsed or sponsored by the governing body of a municipality or a county  
72 commission. Such license shall be issued for a term of no longer than 10 consecutive days and  
73 the fee for the license shall be \$250 regardless of the term of the license. The application for the  
74 license shall contain information required by the commissioner and shall be submitted to the  
75 commissioner at least 30 days prior to the first day when wine is to be sold at the festival or fair.

76 (2) Notwithstanding subdivision (1) of this subsection, if the applicant for the festival or fair  
77 license is the manufacturer of said wine, a winery, or a farm winery as defined in §60-1-5a of this  
78 code, and the event is located on the premises of a winery or a farm winery, then the license fee  
79 is \$50 per festival or fair.

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

89 (4) A festival or fair license may be issued to a "wine club" as defined in this subdivision  
90 for a license fee of \$250. The festival or fair committee or the governing body shall designate a  
91 person to organize a club under a name which includes the name of the festival or fair and the  
92 words "wine club". The license shall be issued in the name of the wine club. A licensee may not

93 commence the sale of wine as provided in this subdivision until the wine club has at least 50 dues-  
94 paying members who have been enrolled, and to whom membership cards have been issued.  
95 Thereafter, new members may be enrolled and issued membership cards at any time during the  
96 period for which the license is issued. A wine club licensed under the provisions of this subdivision  
97 may sell wine only to its members, and in portions not to exceed eight ounces per serving. The  
98 sales shall take place on premises or in an area cordoned or segregated so as to be closed to  
99 the general public, and the general public shall not be admitted to the premises or area. A wine  
100 club licensee under the provisions of this subdivision may serve complimentary samples of wine  
101 in moderate quantities for tasting. A wine club may not make wine purchases from a direct shipper  
102 where the wine may be consumed on the licensed premises of any Class A private wine retail  
103 license or private club. A wine club which violates the provisions of this subdivision is subject to  
104 the penalties in this article.

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

115 (6) A license issued under the provisions of this section and the licensee holding the  
116 license are not subject to the provisions of subsection (g) of this section.

117 (7) An unlicensed winery temporarily licensed and meeting the requirements set forth in  
118 subsection (q) of this section may conduct the same sampling and sales set forth in subsection

119 (g) of this section at a licensed fair and festival upon approval of the licensee holding the fair and  
120 festival license and temporary and limited licensure by the commissioner. An unlicensed winery  
121 shall be subject to the same limits, fees, requirements, restrictions and penalties set forth in  
122 subsection (g) of this section: *Provided*, That the commissioner may by rule or order provide for  
123 certain waivers or exceptions with respect to the provisions, rules, or orders as the circumstances  
124 of each festival or fair may require, including, without limitation, the right to revoke or suspend any  
125 license issued pursuant to this section prior to any notice or hearing notwithstanding the  
126 provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances  
127 shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception  
128 be granted with respect to those subsections.

129 (i)(1) The commissioner may issue a special license for the retail sale of wine in a  
130 professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles  
131 the licensee to sell and serve wine, for consumption in a professional baseball stadium. For the  
132 purpose of this subsection, "professional baseball stadium" means a facility constructed primarily  
133 for the use of a major or minor league baseball franchisee affiliated with the National Association  
134 of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league  
135 baseball park. Any special license issued pursuant to this subsection shall be for a term beginning  
136 on the date of issuance and ending on the next following June 30, and its fee is \$250 regardless  
137 of the length of the term of the license. The application for the special license shall contain  
138 information required by the commissioner and must be submitted to the commissioner at least 30  
139 days prior to the first day when wine is to be sold at the professional baseball stadium. The special  
140 license may be issued in the name of the baseball franchisee or the name of the primary food and  
141 beverage vendor under contract with the baseball franchisee. These sales must take place within  
142 the confines of the professional baseball stadium. The exterior of the area where wine sales may  
143 occur must be surrounded by a fence or other barrier prohibiting entry except upon the  
144 franchisee's express permission, and under the conditions and restrictions established by the



145 franchisee, so that the wine sales area is closed to free and unrestricted entry by the general  
146 public.

147 (2) A license issued under this subsection and the licensee holding the license are subject  
148 to all other provisions of this article and the rules and orders of the commissioner relating to the  
149 special license: *Provided*, That the commissioner may by rule or order grant certain waivers or  
150 exceptions to those rules or orders as the circumstances of each professional baseball stadium  
151 may require, including, without limitation, the right to revoke or suspend any license issued  
152 pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of  
153 this code; and *Provided, however*, That under no circumstances may §60-8-20(c) or §60-8-20(d)  
154 of this code be waived nor shall any exception be granted concerning those subsections.

155 (3) The commissioner may propose rules for promulgation in accordance with §29A-3-1  
156 *et seq.* of this code to implement this subsection.

157 (j) A license to sell wine granted to a private wine bed and breakfast, private wine  
158 restaurant, private wine spa, or a private club under the provisions of this article entitles the  
159 operator to sell and serve wine, for consumption on the premises of the licensee, when the sale  
160 accompanies the serving of food or a meal to its members and their guests in accordance with  
161 the provisions of this article: *Provided*, That a licensed private wine bed and breakfast, private  
162 wine restaurant, private wine spa, or a private club may permit a person over 21 years of age to  
163 purchase wine, consume wine, and recork or reseal, using a tamper resistant cork or seal, up to  
164 two separate bottles of unconsumed wine in conjunction with the serving of food or a meal to its  
165 members and their guests in accordance with the provisions of this article and in accordance with  
166 rules promulgated by the commissioner for the purpose of consumption of said wine off premises;  
167 *Provided, however*, That for this article, food or a meal provided by the private licensee means  
168 that the total food purchase, excluding beverage purchases, taxes, gratuity, or other fees is at  
169 least \$15; and *Provided further*, That a licensed private wine restaurant or a private club may offer  
170 for sale, for consumption off the premises, sealed bottles of wine to its customers provided that

171 no more than one bottle is sold per each person over 21 years of age, as verified by the private  
172 wine restaurant or private club, for consumption off the premises. Such licensees are authorized  
173 to keep and maintain on their premises a supply of wine in quantities appropriate for the conduct  
174 of operations thereof. Any sale of wine is subject to all restrictions set forth in §60-8-20 of this  
175 code. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating  
176 beer as provided by §11-16-1 *et seq.* of this code.

177 (k) With respect to subsections (h), (i), (j), (o), and (p) of this section, the commissioner  
178 shall propose rules for promulgation in accordance with §29A-1-1 *et seq.* of this code, including,  
179 but not limited to, the form of the applications and the suitability of both the applicant and location  
180 of the licensed premises.

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

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

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

189 (o) A wine specialty shop under this article may also hold a wine sampling license  
190 authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine  
191 specialty shop location during regular hours of business. The wine specialty shop may serve up  
192 to three complimentary samples of wine, consisting of no more than two fluid ounces each, to any  
193 one consumer in one day. Persons serving the complimentary samples must be 21 years of age  
194 and an authorized representative of the licensed wine specialty shop, winery, farm winery, or a  
195 representative of a distributor or registered supplier. Distributor and supplier representatives  
196 attending wine sampling events must be registered with the commissioner. No licensee,

197 employee, or representative may furnish, give, sell, or serve complimentary samples of wine to  
198 any person less than 21 years of age or to a person who is physically incapacitated due to the  
199 consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and  
200 secure permission from the commissioner for all wine sampling events one month prior to the  
201 event. Wine sampling events may not exceed six hours per calendar day. Licensees must  
202 purchase all wines used during these events from a licensed farm winery or a licensed distributor.

203 (p) The commissioner may issue special one-day licenses to duly organized, nonprofit  
204 corporations and associations allowing the sale and serving of wine, and may, if applicable, also  
205 allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only,  
206 when raising money for athletic, charitable, educational, or religious purposes. "Auction or  
207 auctioning", for the purposes of this subsection, means any silent, physical act, or verbal bid  
208 auction, whether or not such auction requires in-presence bidding or online Internet-based  
209 electronic bidding through a secure application or website, but shall not include any action in  
210 violation of §47-20-10, §47-20-11, or §61-10-1 *et seq.* of this code. The license application shall  
211 contain information required by the commissioner and shall be submitted to the commissioner at  
212 least 30 days prior to the event. Wines used during these events may be donated by, or purchased  
213 from, a licensed retailer, a distributor, winery, or a farm winery. A licensed winery or farm winery  
214 which is authorized in writing by a representative of the duly organized, nonprofit corporation and  
215 association which has obtained the one-day license; is in good standing with the state; and obtains  
216 the commissioner's approval prior to the one-day license event may, in conjunction with the one-  
217 day licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed ~~of~~ three, two-  
218 fluid ounce tastings or samples per patron, for consumption on the premises during the operation  
219 of the one-day license event; and may sell certain sealed wine bottles manufactured by the  
220 licensed winery or farm winery for off-premises consumption: *Provided*, That for a licensed winery  
221 or farm winery at a licensed one-day event, the tastings, samples and off-premises sales shall  
222 occur under the hours of operation as required in this article, except on Sunday, tastings, samples,

223 and off-premises sales are unlawful between the hours of 2:00 a.m. and 10:00 a.m., from the one-  
224 day licensee's submitted floor plan for the event subject to the requirements in the code and rules.  
225 Under no circumstances may the provisions of §60-8-20(c) or §60-8-20(f) of this code be waived  
226 nor may any exception be granted with respect to those subsections. No more than six licenses  
227 may be issued to any single licensee during any calendar year.

228 (q)(1) In addition to the authorization granted to licensed wineries and farm wineries in  
229 sub-sections (h) and (p), an unlicensed winery, regardless of its designation in another state, but  
230 that is duly licensed in its domicile state, may pay a \$150 nonrefundable and nonprorated fee and  
231 submit an application for temporary licensure on a one-day basis for temporary sampling and sale  
232 of wine in sealed containers for off-premises consumption at a special one-day license nonprofit  
233 event.

234 (2) The application shall include, but is not limited to, the person or entity's name, address,  
235 taxpayer identification number, and location; a copy of its licensure in its domicile state; a signed  
236 and notarized verification that it produces 50,000 gallons or less of wine per year; a signed and  
237 notarized verification that it is in good standing with its domicile state; copies of its federal  
238 certificate of label approvals and certified lab alcohol analysis for the wines it desires to  
239 temporarily provide samples and temporarily sell wine in sealed containers for off-premises  
240 consumption at a special one-day license for a nonprofit event issued under sub-section (p); and  
241 such other information as the commissioner may reasonably require.

242 (3) The applicant winery shall include a list of all wines proposed to be temporarily sampled  
243 and temporarily sold in sealed containers at a special one-day license for a nonprofit event so  
244 that the wines may be reviewed in the interest of public health and safety. Once approved, the  
245 submitted wine list will create a temporary wine brand registration for up to two special one-day  
246 license for a nonprofit event for no additional fee.

247 (4) An applicant winery that receives this temporary special one-day license for a nonprofit  
248 event will provide a signed and notarized agreement where the applicant winery agrees to pay all  
249 municipal, local, and sales taxes applicable to the sale of wine in West Virginia.

250 (5) An application must be submitted per special one-day license for a nonprofit event the  
251 applicant winery desires to attend, and the license fee shall cover up to two special one-day  
252 license for nonprofit events before an additional fee would be paid. In no circumstance would such  
253 a winery be permitted to attend more than four special one-day license for nonprofit events per  
254 year. Any such applicant or unlicensed winery desiring to attend more than four special one-day  
255 license for nonprofit events per year or otherwise operate in West Virginia would need to seek  
256 appropriate licensure as a winery or a farm winery in this state.

257 (6) Notwithstanding the provisions of this article and requirements for licensure, wine  
258 brand registration, payment of wine liter tax, and the winery's appointment of suppliers and  
259 distributors, this temporary special one-day license for a nonprofit event, once granted, permits  
260 such a winery to operate in this limited capacity only at the approved specific, special one-day  
261 license for a nonprofit event subject to the limitations noted in this section.

262 (7) The applicant winery will need to further apply for and receive a transportation permit  
263 in order to legally transport wine in the state per §60-6-12 of this code.

264 (8) The applicant winery is subject to all applicable violations and/or penalties under this  
265 article and the legislative rules that is not otherwise excepted by this sub-section: *Provided, That*  
266 the commissioner may by rule or order provide for certain waivers or exceptions with respect to  
267 the provisions, rules, or orders as the circumstances of each festival or fair may require, including,  
268 without limitation, the right to revoke or suspend any license issued pursuant to this section prior  
269 to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code:  
270 *Provided, however, That* under no circumstances shall the provisions of §60-8-20(c) or §60-8-  
271 20(d) of this code be waived nor shall any exception be granted with respect to those subsections.

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

280           (fs)(1) The commissioner may issue a special license for the retail sale of wine in a college  
281 stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and  
282 serve wine for consumption in a college stadium. For the purpose of this subsection, “college  
283 stadium” means a facility constructed primarily for the use of a Division I, II, or III college that is a  
284 member of the National Collegiate Athletic Association, or its successor, and used as a football,  
285 basketball, baseball, soccer, or other Division I, II, or III sports stadium. A special license issued  
286 pursuant to this subsection shall be for a term beginning on the date of its issuance and ending  
287 on the next following June 30, and its fee is \$250 regardless of the length of the term of the  
288 license. The application for the special license shall contain information required by the  
289 commissioner and must be submitted to the commissioner at least 30 days prior to the first day  
290 when wine is to be sold. The special license may be issued in the name of the National Collegiate  
291 Athletic Association Division I, II, or III college or university or the name of the primary food and  
292 beverage vendor under contract with that college or university. These sales must take place within  
293 the confines of the college stadium: *Provided*, That the exterior of the area where wine sales may  
294 occur must be surrounded by a fence or other barrier prohibiting entry except upon the college or  
295 university’s express permission, and under the conditions and restrictions established by the  
296 college or university, so that the wine sales area is closed to free and unrestricted entry by the  
297 general public.

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

306           (3) The commissioner may propose rules for promulgation in accordance with §29A-3-1  
307 *et seq.* of this code to implement this subsection.

NOTE: The purpose of this bill is to permit certain non-licensed wineries not located in the state of West Virginia to come to the state and attend a fair and festivals and special one-day charitable wine events, and further temporarily provide wine samples and temporarily sell wine for off-premises consumption in the state with the hopes such wineries may eventually apply for a permanent license in the future.

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