WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5012

By Delegates Coop-Gonzalez, Dillon, Vance, Kirby, Pinson, Burkhammer, and Butler

[Introduced January 23, 2024; Referred to the Committee on Government Organization]

A BILL to amend and reenact §60-7-8e of the Code of West Virginia, 1931, as amended; and to amend and reenact §60-8-6c and §60-8-6d of said code; all relating to removing references to the sale or distribution of alcohol as being in the best interest of the state.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-8e. Private club restaurant or private manufacturer club licensee’s authority to sell craft cocktail growlers.

(a) *Legislative findings*. — The Legislature hereby finds that it is in the public interest to ~~regulate, control, and support~~ regulate and control the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of liquor and its industry in this state to protect the public health, welfare, and safety of the citizens of this state ~~and promote hospitality and tourism~~. Therefore, this section authorizes a licensed private club restaurant or private manufacturer club, to have certain abilities to promote the sale of liquor manufactured in this state. ~~for the benefit of the citizens of this state, the state’s growing distilling industry, and the state’s hospitality and tourism industry, all of which are vital components for the state’s economy~~

(b) *Sales of craft cocktail growlers*. — A licensed private club restaurant or private manufacturer club is authorized under a current and valid license and meets the requirements of this section may offer a craft cocktail growler in the ratio of up to one fluid ounce of liquor to four fluid ounces of nonalcoholic beverages or mixers, not to exceed 128 fluid ounces for the entire beverage in the craft cocktail growler, for retail sale to patrons from their licensed premises in a sealed craft cocktail growler for personal consumption only off of the licensed premises. Prior to the sale, the licensee shall verify in-person, using proper identification, that any patron purchasing the craft cocktail growler is 21 years of age or older and that the patron is not visibly or noticeably intoxicated. There shall be a $100 non-prorated, non-refundable annual fee to sell craft cocktail growlers.

(c) *Retail sales*. — Every licensee licensed under this section shall comply with all the provisions of this chapter as applicable to retail sale of liquor at retail liquor outlets, comply with markup specified in §60-3A-17(e)(2) of this code when conducting sealed craft cocktail growler sales, and shall be subject to all applicable requirements and penalties in this article.

(d) *Payment of taxes*. — Every licensee licensed under this section shall pay all sales taxes required of retail liquor outlets, in addition to any other taxes required, and meet any applicable licensing provisions as required by this chapter and by rule of the commissioner.

(e) *Advertising.* — Every licensee licensed under this section may only advertise a particular brand or brands of liquor manufactured by a distillery, mini-distillery, or micro-distillery upon written approval from the distillery, mini-distillery, micro-distillery, or an authorized and licensed broker to the licensee. Advertisements may not encourage intemperance or target minors.

(f) *Craft cocktail growler defined*. – For purposes of this chapter, "Craft Cocktail Growler" means a container or jug that is made of glass, ceramic, metal, plastic, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and must be capable of being securely sealed. The growler is utilized by an authorized licensee for purposes of off-premises sales only of liquor and a nonalcoholic mixer or beverage for personal consumption not on a licensed premise. Notwithstanding any other provision of this code to the contrary, a securely sealed craft cocktail growler is not an open container under state and local law. A craft cocktail growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. A craft cocktail growler is not an original container of liquor, but once sanitized, filled, properly sealed, and sold, all as set forth in this article, is a sealed container.

(h) *Craft cocktail growler requirements*. — A licensee licensed under this section must prevent patrons from accessing the secure area where the filling of the craft cocktail occurs or to fill a craft cocktail growler. A licensee licensed under this section must sanitize, fill, securely seal, and label any craft cocktail growler prior to its sale. A licensee licensed under this section may refill a craft cocktail growler subject to the requirements of this section. A licensee licensed under this section shall visually inspect any craft cocktail growler before filling or refilling it. A licensee licensed under this section may not fill or refill any craft cocktail growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container. For purposes of this article, a secure sealing means using a tamper-evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid of craft cocktail growler to form a seal that must be broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the craft cocktail growler is opened.

(i) *Craft cocktail growler labeling*. — A licensee licensed under this section selling craft cocktail growlers shall affix a conspicuous label on all sold and securely sealed craft cocktail growlers listing the name of the licensee selling the craft cocktail growler, the brand of the liquor in the craft cocktail growler, the type of craft cocktail or name of the craft cocktail, the alcohol content by volume of the liquor in the craft cocktail growler, and the date the craft cocktail growler was filled or refilled, and, all labeling on the craft cocktail growler shall be consistent with all federal labeling and warning requirements.

(j) *Craft cocktail growler sanitation*. — A licensee licensed under this section shall clean and sanitize all craft cocktail growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensee licensed under this section shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines, barrel tubes, and any other related equipment used to fill or refill craft cocktail growlers. Failure to comply with this subsection may result in penalties under this article: *Provided*, That, if the reuse or refilling of a craft cocktail growler would violate federal law such craft cocktail growler must only be used one-time, for one filling, and be discarded after the one-time use.

(k) *Pre-mixing of craft cocktail*. - A licensee licensed under this section may pre-mix the nonalcoholic beverages or mixers in the advance of a craft cocktail growler purchase and sealing, and add the liquor, as set forth in this section, upon a member or guest’s purchase of a craft cocktail growler. A licensee licensed under this section must dispose of any expired premixed nonalcoholic beverages or mixers pursuant to Bureau for Public Health requirements when such premixed nonalcoholic beverages or mixers are no longer fit for human consumption. A licensee authorized under §60-6-8(7) may use a premixed beverage meeting the requirements therein and is also subject to the requirements of this section for a craft cocktail growler.

(l) *Limitations on licensees*. — A licensee licensed under this section shall not sell craft cocktail growlers to other licensees, but only to its members and guests. A licensee licensed under this section must provide food or a meal along with one sealed craft cocktail growler to a patron who is in-person or in-vehicle while picking up food or a meal, and a sealed craft cocktail growler order-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly or noticeably intoxicated, and as otherwise specified in this article. A licensee licensed under this section may only sell one sealed craft cocktail growler to a patron who has not been consuming alcoholic liquors or nonintoxicating beer on its licensed premises or one craft cocktail growler per food or meal in the order delivered per §60-7-8f of this code. A licensee licensed under this section shall be subject to the applicable penalties under this article for violations of this article.

(m) *Rules*. — The commissioner, in consultation with the Bureau for Public Health, may to propose legislative rules concerning sanitation for legislative approval, pursuant to §29A-3-1 *et seq*. of this code, to implement the purposes of this section.

ARTICLE 8. SALE OF WINES.

§60-8-6c. Winery and farm winery license to sell wine growlers and provide complimentary samples prior to purchasing a wine growler.

(a) *Legislative findings*. — The Legislature hereby finds that it is in the public interest to ~~regulate, control, and support~~ regulate and control the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of wine and its industry in this state to protect the public health, welfare, and safety of the citizens of this state. ~~and promote hospitality and tourism~~ Therefore, this section authorizes a licensed winery or farm winery with its principal place of business and manufacture located in this state to have certain abilities to promote the sale of wine manufactured in this state. ~~for the benefit of the citizens of this state, the state’s growing wine industry, and the state’s hospitality and tourism industry, all of which are vital components for the state’s economy~~

(b) *Sales of wine*. — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may, when licensed under this section, offer only wine manufactured by the licensed winery or farm winery for retail sale to customers from the winery or farm winery’s licensed premises for consumption off of the licensed premises only in the form of original container sealed wine kegs, wine bottles, or wine cans, or also a sealed wine growler for personal consumption, and not for resale. A licensed winery or farm winery may not sell, give, or furnish wine for consumption on the premises of the principal place of business and manufacture located in the State of West Virginia, except for the limited purpose of complimentary samples as permitted in subsection (c) of this section or unless separately licensed as a private wine restaurant or a private manufacturer club.

(c) *Complimentary samples*. — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may offer complimentary samples of wine as set forth in §60-4-3b of this code.

(d) *Retail sales*. — Every licensed winery or farm winery under this section shall comply with all the provisions of this article as applicable to wine retailers when conducting wine growler sales and is subject to all applicable requirements and penalties in this article.

(e) *Payment of taxes and fees*. — A winery or farm winery licensed under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and shall meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(f) *Advertising*. — A winery or farm winery under this section may advertise a particular brand or brands of wine produced by the licensed winery or farm winery and the price of the wine subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(g) *Wine Growler defined*. — For purposes of this section and section §60-8-6d of the code, "wine growler" means a container or jug that is made of glass, ceramic, metal, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and is capable of being securely sealed. The growler may be used by an authorized licensee for purposes of off-premises sales only of wine for personal consumption, and not for resale. The wine served and sold in a sealed wine growler may include ice or water mixed with the wine to create a frozen alcoholic beverage. Any frozen alcoholic beverage machine used for filling wine growlers shall be sanitized daily and shall be under control and served by the licensee from the secure area. Notwithstanding any other provision of this code to the contrary, a securely sealed wine growler is not an open container under state and local law. A wine growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. For purpose of this article, a secure seal means using a tamper evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid of wine growler to form a seal that shall be broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the wine growler is opened.

(h) *Wine Growler requirements*. — A winery or farm winery licensed under this section shall prevent patrons from accessing the secure area where the winery or farm winery fills a wine growler and prevent patrons from filling a wine growler. A licensed winery or farm winery under this section shall sanitize, fill, securely seal, and label any wine growler prior to its sale. A licensed winery or farm winery under this section may refill a wine growler subject to the requirements of this section. A winery or farm winery shall visually inspect any wine growler before filling or refilling it. A winery or farm winery may not fill or refill any wine growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

(i) *Wine Growler labeling*. — A winery or farm winery licensed under this section selling wine growlers shall affix a conspicuous label on all sold and securely sealed wine growlers listing the name of the licensee selling the wine growler, the brand of the wine in the wine growler, the alcohol content by volume of the wine in the wine growler, and the date the wine growler was filled or refilled. All labeling on the wine growler shall be consistent with all federal labeling and warning requirements.

(j) *Wine Growler sanitation*. — A licensed winery or farm winery authorized under this section shall clean and sanitize all wine growlers it fills or refills in accordance with all state and county health requirements prior to its filling and sealing. In addition, the licensed winery or farm winery shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipelines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under this article.

(k) *Fee*. — There is no additional fee for a licensed winery or farm winery authorized under this section to sell wine growlers, but the licensee shall meet all other requirements of this section.

(l) *Limitations on licensees*. — To be authorized under this section, a licensed winery or farm winery may not produce more than 10,000 gallons of wine per calendar year at the winery or farm winery’s principal place of business and manufacture located in the State of West Virginia. A licensed winery or farm winery authorized under this section is subject to the applicable penalties under this article for violations of this section.

(m) *Rules*. — The commissioner, in consultation with the Bureau for Public Health, may propose legislative rules concerning sanitation for legislative approval, pursuant to §29A-3-1 *et seq*. of this code, to implement this section.

§60-8-6d. Wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, Class B retail dealer, private club restaurant, private manufacturer club, Class A retail licensee, and Class B retail licensee’s authority to sell wine growlers.

(a) *Legislative findings*. — The Legislature hereby finds that it is in the public interest to ~~regulate, control, and support~~ regulate and control the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of wine and its industry in this state to protect the public health, welfare, and safety of the citizens of this state ~~and promote hospitality and tourism~~. Therefore, this section authorizes a licensed wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, private club restaurant, private manufacturer club, Class A retail licensee, or Class B retail licensee to have certain abilities in order to promote the sale of wine manufactured in this state. ~~for the benefit of the citizens of this state, the state’s growing wine industry, and the state’s hospitality and tourism industry, all of which are vital components for the state’s economy~~

(b) *Sales of wine*. — A licensed wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, private club restaurant, private manufacturer club, Class A retail licensee, or Class B retail licensee who pays the fee in subsection (h) of this section and meets the requirements of this section may offer wine for retail sale to patrons from the licensed premises in a sealed wine growler for personal consumption off of the licensed premises, and not for resale. Prior to the sale, the licensee shall verify, using proper identification, that any patron purchasing wine is 21 years of age or over and that the patron is not visibly intoxicated. The nonprorated, nonrefundable annual fee to sell wine growlers is $100.

(c) *Retail sales.* — Every licensee authorized under this section shall comply with all the provisions of this article as applicable to wine retailers when conducting sales of wine in a wine growler and is subject to all applicable requirements and penalties in this article.

(d) *Payment of taxes and fees*. — A licensee authorized under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(e) *Advertising*. — A licensee authorized under this section may advertise a particular brand or brands of wine and the price of the wine, subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(f) *Wine Growler defined and requirements*. — A licensee authorized under this section shall use the wine growler definition and requirements in §60-8-6c(g) and §60-8-6c(h) of this code.

(g) *Wine Growler labeling and sanitation*. — A licensee authorized under this section shall label and sanitize wine growlers as set forth in §60-8-6c(i) and §60-8-6c(j) of this code.

(h) *Complimentary samples*. — A licensee authorized under this section may provide complimentary wine growler samples to a person intending to purchase a wine growler which may be no greater than two fluid ounces per wine growler sample and a wine growler sampling shall not exceed three complimentary two fluid ounce samples per patron per day. A licensee authorized under this section providing complimentary wine samples shall, prior to providing any samples, verify that the patron sampling wine is 21 years of age or older and that the patron is not visibly or noticeably intoxicated.

(i) *Limitations on licensees*. — A licensee under this section may only sell wine growlers during the hours of operation set forth in this article. Any licensee licensed under this section shall maintain a secure area for the sale and filling of wine in a wine growler. The secure area shall only be accessible by the licensee. Any licensee licensed under this section is subject to the applicable penalties under this article for violations.

(j) *Non-applicability of certain statutes*. — Notwithstanding any other provision of this article to the contrary, licensees under this section are permitted to break the seal of the original container for the limited purpose of filling a wine growler or providing complimentary wine samples as provided in this section. Any unauthorized sale of wine or any consumption not permitted on the licensee’s licensed premises is subject to penalties under this article.

(k) *Rules*. — The commissioner may propose legislative rules for legislative approval, pursuant to §29A-3-1 *et seq*. of this code, to implement this section.

NOTE: The purpose of this bill is to remove references to the sale or distribution of alcohol as being in the best interest of the state.

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