

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5294

By Delegates W. Clark, Espinosa, Howell, Hardy,
Horst, Dittman, Miller, Householder, Hite, Crouse, and
Hornby

[Originating in the Committee on Government
Organization; Reported on February 12, 2024]

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 §60-6-1 of said code; to amend
3 and reenact §60-8-2, §60-8-3, §60-8-6c, and §60-8-32a of said code; to amend said code
4 by adding thereto a new section, designated §60-8-8; and to amend and reenact §60-8A-5
5 of said code, all relating to revising and updating the code regulating farm wineries in West
6 Virginia to allow the state's farm winery industry to be more competitive with farm wineries
7 in adjacent states; creating new classes of farm winery based on volume of production;
8 requiring that certain class-dependent percentages of fruit and agricultural products must
9 be grown or produced on the farm winery and providing for exceptions and alternative
10 ways of meeting these sourcing requirements; limiting certain county and local regulation
11 of farm wineries; eliminating the requirement that farm winery samples be complimentary;
12 revising allowable sample amounts; eliminating the requirement that farm wineries selling
13 wine by the glass and by the bottle for consumption on the premises be required to also
14 serve prepared food and allowing pre-packaged food; revising winery and farm winery
15 licensing; adding definition of farm winery; permitting West Virginia Farm Wineries with
16 Class A licenses to sell and serve wine by the glass and bottle at West Virginia Fairs and
17 Festivals; and removing the requirements that prepared food be provided and that
18 samples be complimentary, and allowing for the provision of pre-packaged food for hard
19 cider sales at farm wineries, all relating to revising and updating the code regulating farm
20 wineries in West Virginia to allow the state's farm winery industry to be more competitive
21 with farm wineries in adjacent states.

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, which includes hard cider, and nonfortified dessert wine are~~

3 ~~manufactured exclusively by natural fermentation from grapes, apples, pears, peaches, other~~
4 ~~fruits or honey, or other agricultural products containing sugar and where port, sherry, and Madeira~~
5 ~~wine may also be manufactured, with 25 percent of such raw products being produced by the~~
6 ~~owner of the farm winery on the premises of that establishment and no more than 25 percent of~~
7 ~~such produce originating from any source outside this state. Any port, sherry, or Madeira wine~~
8 ~~manufactured by a winery or a farm winery shall not exceed an alcoholic content of 22 percent~~
9 ~~alcohol by volume and shall be matured in wooden barrels or casks~~

10 (1) For a Class I farm winery, all of the fruits or agricultural products used to manufacture
11 wine shall be grown or produced on the farm winery's farm located in West Virginia. A Class I farm
12 winery shall have a growing area no smaller than one acre that produces fruits or agricultural
13 products used in the manufacture of the farm winery's wine. A Class I farm winery shall ferment on
14 the farm winery's farm no more than 1,000 gallons of wine per year which shall be fermented on
15 the farm winery's farm located in West Virginia.

16 (2) For a Class II farm winery, at least 30 percent of the fruits or agricultural products used
17 to manufacture the farm winery's wine shall be grown or produced on property in the State of West
18 Virginia that is owned or leased by the farm winery and no more than 30 percent of the fruits or
19 agricultural products used to manufacture wine shall be grown or produced outside the State of
20 West Virginia. A Class II farm winery shall have on the licensed premises a growing area no
21 smaller than two acres that produces fruits or agricultural products used to manufacture the wine
22 of such farm winery. A Class II farm winery shall ferment on the farm winery's farm no more than
23 1,500 gallons of wine per year which shall be fermented on the farm winery's farm located in West
24 Virginia.

25 (3) For a Class III farm winery, 50 percent of the fruits or agricultural products used to
26 manufacture wine shall be grown or produced in the State of West Virginia. A Class III farm winery
27 shall have on the licensed premises a growing area no smaller than three acres that produces
28 fruits or agricultural products used to manufacture the wine of such farm winery. A Class III farm

29 winery shall ferment on the licensed premises no more than 2,500 gallons of wine per year, and no
30 less than 50 percent of the wine sold by such licensee shall be fermented on the farm winery's
31 farm.

32 (4) For a Class IV farm winery, 50 percent of the fruits or agricultural products used by the
33 farm winery to manufacture wine shall be grown or produced in the State of West Virginia. A Class
34 IV farm winery shall have a growing area no smaller than 3 acres that produces fruits or
35 agricultural products used to manufacture the farm winery's wine and may produce more than
36 2,500 gallons of wine per year. No Class IV farm winery license shall be issued to any person that
37 has not operated under an existing smaller class of farm winery for at least seven years.

38 (5) A farm winery may trade or purchase with other farm wineries fruits or agricultural
39 products grown or produced on their farm that is owned or leased and located in the state of West
40 Virginia. For the purposes of this section, fruit or agricultural products traded, exchanged or
41 purchased between farm wineries shall be considered grown or produced on the farm of the
42 receiving farm winery for the purposes of meeting the fruit sourcing requirement in subdivisions
43 (1), (2), (3), and (4), provided that verification is provided to the receiving farm winery that the fruit
44 or agricultural products traded or exchanged were grown or produced in the state of West Virginia
45 by the farm winery engaging in such trade or exchange. Both farm wineries shall maintain
46 complete and accurate records of the quantity and source of any fruit or agricultural products
47 traded or exchanged. Such trades or exchanges shall be bona fide transactions based on the fair
48 market value of the fruits or agricultural products traded or exchanged. For the purposes of this
49 subsection, "agricultural products" means the raw materials used or intended to be used in the
50 manufacture of wine or cider by farm winery or cidery.

51 (6) Notwithstanding the provisions of subdivisions (1), (2), (3), and (4), upon petition by the
52 Secretary of the Department of Agriculture, the West Virginia Alcohol Beverage Control
53 Commissioner may permit the use (i) of a greater quantity of out-of-state products if the fruit grown
54 or produced in the state of West Virginia are insufficient for a farm winery licensee, whether Class

55 I, Class II, Class III, or Class IV, to achieve the level of production that otherwise could be
56 anticipated during a given license year or (ii) by a Class I, Class II, Class III, or Class IV farm
57 winery of a lesser percentage of products grown or produced on the farm wineries farm or on other
58 property in the state of West Virginia that is owned or leased by the farm winery, as applicable, if
59 unusually severe weather or disease conditions cause a significant reduction in the availability of
60 fruit or other agricultural products grown or produced on such property to manufacture wine during
61 a given year.

62 (b) Notwithstanding the provisions of subsection (a) of this section, a farm winery may
63 include one off-farm location. The owner of a farm winery may provide to the commissioner
64 evidence, accompanied by written findings by the West Virginia Agriculture Commissioner in
65 support thereof, that the owner has planted on the premises of the farm winery young nonbearing
66 fruit plants. The commissioner may grant permission for one off-farm location when the location
67 produces in an amount equal to that reasonably expected to be produced when the nonbearing
68 fruit plants planted on the farm winery come into full production. The length of time of the
69 permission to use an off-farm location shall be determined by the commissioner after consultation
70 with the Agriculture Commissioner.

ARTICLE 4. LICENSES.

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

1 (a) An operator of a winery or farm winery may offer wine produced by the winery, farm
2 winery, or a farm entity authorized by §60-1-5c of this code, for retail sale to customers from the
3 winery or farm winery for consumption on or off the premises ~~only~~. Customers may consume wine
4 on the premises when an operator of a winery or farm winery offers complimentary samples
5 pursuant to §60-4-3b(q), §60-4-3b(r), and §60-6-1 of this code, the winery or farm winery is
6 licensed as a private wine restaurant, or the winery or farm winery is licensed as a private
7 manufacturer club. Customers may not consume any wine on the licensed premises of the winery,
8 farm winery, or a farm entity authorized by §60-1-5c of this code, unless the winery, farm winery, or

9 farm entity has obtained a multi-capacity winery or farm winery license: *Provided*, That under this
10 subsection, a licensed winery or farm winery may offer complimentary samples of wine
11 manufactured by that licensed winery or farm winery for consumption on the premises only on
12 Sundays beginning at 6:00 a.m. in any county in which the same has been approved as provided
13 in §7-1-3ss during the hours of operation set forth in §60-8-1 et seq. of this code. Notwithstanding
14 any other provision of law to the contrary, a licensed winery or farm winery may sell, serve, and
15 furnish wine, for on-premises consumption when licensed accordingly, beginning at 6:00 a.m., and
16 for off-premises consumption beginning at 6:00 a.m. on any day of the week, unless otherwise
17 determined by the residents of the county pursuant to §7-1-3ss of this code.

18 (b) Local restriction upon activities and events of farm wineries licensed in accordance with
19 §60-4-3b of the code to market and sell their products shall be reasonable and shall take into
20 account the economic impact on the farm winery of such restriction, the agricultural nature of such
21 activities and events, and whether such activities and events are usual and customary for farm
22 wineries throughout the state of West Virginia and adjacent states. Usual and customary activities
23 and events at farm wineries shall be permitted without local regulation unless there is a substantial
24 impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other
25 than outdoor amplified music, arising from activities and events at farm wineries shall be more
26 restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at a
27 farm winery, the locality shall consider the effect on adjacent property owners and nearby
28 residents.

29 (c) No locality may treat private personal gatherings held by the owner of a licensed farm
30 winery who resides at the farm winery or on property adjacent thereto that is owned or controlled
31 by such owner at which gatherings wine is not sold or marketed and for which no consideration is
32 received by the farm winery or its agents differently from private personal gatherings by other
33 citizens.

34 (d) No locality shall regulate any of the following activities of a farm winery licensed in
35 accordance with subsection (b) of §60-4-3b of the code:

36 (1) The production and harvesting of fruit and other agricultural products and the
37 manufacturing of wine;

38 (2) The on-premises sale, tasting, or consumption of wine during regular business hours
39 set forth in §60-4-3b(a), §60-4-3b(q) and §60-4-3b(r) of the code within the normal course of
40 business of the licensed farm winery;

41 (3) The direct sale and shipment of wine by common carrier to consumers in accordance
42 with the requirements of §60-8-6 and §60-8-6a of this code and the regulations of the West Virginia
43 Alcohol Beverage Control Commissioner;

44 (4) The storage, warehousing, and wholesaling of wine in accordance with the regulations
45 of the West Virginia Alcohol Beverage Control Commissioner, and federal law; or

46 (5) The sale of wine-related items, including but not limited to the sale of pre-packaged
47 food not requiring kitchen preparation, that are incidental to the sale of wine and/or consumption of
48 wine on premises.

49 (e) (b) Complimentary samples Samples allowed by the provisions of this section may not
50 exceed two fluid ounces and no more than ~~three~~ six samples may be given to a patron in any one
51 day.

52 (f) (c) Complimentary samples Samples may be provided only for on-premises
53 consumption.

54 (g) (d) A winery, farm winery, or farm entity, pursuant to §60-1-5c of this code, may offer for
55 retail sale from their licensed premises sealed original container bottles of wine for off-premises
56 consumption only.

57 (h) (e) A winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code,
58 holding a multi-capacity license and a private wine restaurant license may offer for sale and
59 service wine by the drink or glass in a private wine restaurant located which may be sold by the

60 bottle when consumed by the glass on the property of the winery, farm winery, or farm entity
61 licensed pursuant to §60-1-5c of this code.

62 (i) ~~(f)~~ Every licensed winery or farm winery shall comply with the provisions of §60-3-1 *et*
63 *seq.*, §60-4-1 *et seq.*, and §60-8-1 *et seq.* of this code as applicable to wine retailers, wineries, and
64 suppliers when properly licensed in such capacities.

65 (j) ~~(g)~~(1) The winery or farm winery shall pay all taxes and fees required of licensed wine
66 retailers and meet applicable licensing provisions as required by this chapter and by rules
67 promulgated by the commissioner.

68 (2) Each winery or farm winery acting as its own supplier shall submit to the Tax
69 Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in
70 §60-8-1 *et seq.* of this code.

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

75 (4) A liter tax shall not be collected on wine sold in the original sealed package for the
76 purpose of resale in the original sealed package if a subsequent sale of the wine is subject to the
77 liter tax.

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

80 (k) ~~(h)~~ A winery or farm winery may advertise a particular brand or brands of wine produced
81 by it. The price of the wine is subject to federal requirements or restrictions.

82 (l) ~~(i)~~ A winery or farm winery shall maintain separate winery or farm winery supplier,
83 retailer, and direct shipper licenses when acting in one or more of those capacities and shall pay all
84 associated license fees, unless the winery or farm winery holds a license issued pursuant to the
85 provisions of §60-8-3(b)(12) of this code. A winery or farm winery, if holding the appropriate

86 licenses or a multi-capacity winery or farm winery license, may act as its own supplier; retailer for
87 off-premises consumption of its wine as specified in §60-6-2 of this code; private wine restaurant;
88 and direct shipper for wine produced by the winery or farm winery. A winery or farm winery that has
89 applied, paid all fees, and met all requirements may obtain a private manufacturer club license
90 subject to the requirements of §60-7-1 *et seq.* of this code, and a Class A retail dealer license
91 subject to the requirements of §11-16-1 *et seq.* of this code. All wineries shall use a distributor to
92 distribute and sell their wine in the state, except for farm wineries. Wineries or farm wineries may
93 enter into alternating wine proprietorship agreements, pursuant to §60-1-5c of this code.

94 (m) ~~(j)~~ The owners of a licensed winery or farm winery may operate a distillery, mini-
95 distillery, or micro-distillery, brewery, or as a resident brewer, as otherwise specified in the code.

96 (n) ~~(k)~~ For purposes of this section, terms have the same meaning as provided in §8-13-7
97 of this code.

98 (o) ~~(l)~~ Building code and tax classification. — Notwithstanding any provision of this code to
99 the contrary, the mere addition of a winery or farm winery licensed under this article on a property
100 does not change the nature or use of the property which otherwise qualifies as agricultural use for
101 building code and property tax classification purposes.

102 (p) ~~(m)~~ In the interest of promoting tourism throughout the state, every licensed winery or
103 farm winery manufacturing wine in this state is authorized, with a limited off-site retail privilege at
104 private fair and festivals, for off-premises consumption sales of only the winery or farm winery's
105 sealed wine. At least five days prior to an approved private fair and festival, an authorized winery
106 or farm winery shall provide a copy of a written agreement to sell only wine manufactured by the
107 licensed winery or farm winery at the private fair and festival's licensed premises. If approved, an
108 authorized licensed winery or farm winery may conduct off-premises consumption sales of their
109 wine from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All
110 authorized and approved wineries and farm wineries' off-premises consumption sales shall
111 comply with all retail requirements in §60-8-1 *et seq.* of this code, and specifically with respect to

112 all markups, taxes, and fees. Additionally, an authorized winery, farm winery unlicensed as
113 referenced in §60-8-3 of this code ~~or may provide, sell, and serve complimentary wine samples in~~
114 the amounts set forth in subsection (b) of this section ~~or drinks wine~~ by the bottle, ~~or when~~
115 consumed by the glass, or by the glass for on-premises consumption to patrons who are 21 years
116 of age and older and who are not intoxicated ~~in the amounts set forth in subsection (b).~~

117 (q) Farm Wineries. – Every farm winery with a Class I, II, III, or IV license shall be permitted
118 to serve and sell wine by the glass and by the bottle for consumption on the premises, without the
119 requirement to serve prepared food with the wine or application of any local health department
120 limitations for food service in the area in which the wine is served. Prior to the sale, the licensee
121 shall verify, using proper identification, that any patron purchasing wine is 21 years of age or over
122 and that the patron is not visibly intoxicated.

123 (r) All West Virginia Farm Wineries possessing a Class I, II, III, or IV license may serve and
124 sell wine by the glass or by the bottle at any fair or festival in the state of West Virginia.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-1. When lawful to possess, use or serve alcoholic liquors.

1 The provisions of this chapter may not prevent:

2 (1) A person from keeping and possessing alcoholic liquors in his or her residence for the
3 personal use of himself or herself, his or her family, his or her employee, or his or her guests if the
4 alcoholic liquors have been lawfully acquired by him or her;

5 (2) A person, his or her family, or employee from giving or serving such alcoholic liquors to
6 guests in the residence, when the gift or service is not for the purpose of evading the provisions of
7 this chapter;

8 (3) The holder of a winery or a farm winery license from serving ~~complimentary~~ samples of
9 its wine ~~in moderate quantities~~ for tasting on the winery or the farm winery premises; and

10 (4) The holder of a distillery, mini-distillery, or a micro-distillery license from serving
11 complimentary samples of its alcoholic liquor in moderate quantities for tasting on the distillery,
12 mini-distillery, or micro-distillery premises.

ARTICLE 8. SALE OF WINES.

§60-8-2. Definitions.

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

3 "Commissioner" or "commission" means the West Virginia Alcohol Beverage Control
4 Commissioner.

5 "Distributor" means any person whose principal place of business is within the State of
6 West Virginia who makes purchases from a supplier to sell or distribute wine to retailers, grocery
7 stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs,
8 or wine specialty shops and that sells or distributes nonfortified dessert wine, port, sherry and
9 Madeira wines to wine specialty shops, private wine restaurants, private clubs, or retailers under
10 authority of this article and maintains a warehouse in this state for the distribution of wine. For the
11 purpose of a distributor only, the term "person" means and includes an individual, firm, trust,
12 partnership, limited partnership, limited liability company, association, or corporation. Any trust
13 licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or
14 other persons in active control of the activities of the trust relating to the distributor license, is liable
15 for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or
16 violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

17 "Farm winery" means an establishment or cooperative located in the State of West Virginia
18 on land zoned agricultural that has a vineyard, orchard, or similar growing area that produces fruits
19 or other agricultural products used to manufacture the wine of such farm winery, subject to the
20 production volume and other requirements set forth in §60-1-5a of this code.

21 "Fortified wine" means any wine to which brandy or other alcohol has been added where
22 the alcohol content by volume does not exceed 24 percent, and includes nonfortified dessert
23 wines where the alcohol content by volume is greater than 17 percent and does not exceed 24
24 percent.

25 "Grocery store" means any retail establishment, commonly known as a grocery store,
26 supermarket, delicatessen, caterer, or party supply store, where food, food products, and supplies
27 for the table are sold for consumption off the premises with average monthly sales (exclusive of
28 sales of wine) of not less than \$500 and an average monthly inventory (exclusive of inventory of
29 wine) of not less than \$500. The term "grocery store" also includes and means a separate and
30 segregated portion of any other retail store which is dedicated solely to the sale of food, food
31 products, and supplies for the table for consumption off the premises with average monthly sales
32 with respect to the separate or segregated portion (exclusive of sales of wine) of not less than
33 \$500 and an average monthly inventory (exclusive of inventory of wine) of not less than \$500.

34 "Hard Cider" means a type of wine that is derived primarily from the fermentation of apples,
35 pears, peaches, honey, or another fruit, or from apple, pear, peach, or another fruit juice
36 concentrate and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters;
37 contains at least one half of one percent and less than 12 and one-half percent alcohol by volume;
38 and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and
39 not as wine, wine product, or as a substitute for wine.

40 "Hard Cider Distributor" means any person whose principal place of business is within the
41 State of West Virginia who makes purchases from a supplier to sell or distribute hard cider (but not
42 other types of wine) to retailers, grocery stores, private wine bed and breakfasts, private wine
43 restaurants, private wine spas, private clubs, or wine specialty shops under authority of this code
44 and maintains a warehouse in this state for the distribution of hard cider (but not other types of
45 wine). For the purpose of a hard cider distributor, the term "person" means and includes an
46 individual, firm, trust, partnership, limited partnership, limited liability company, association, or

47 corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee,
48 and the trustee, or any other person or persons in active control of the activities of the trust relating
49 to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor
50 license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in
51 §44D-10-1 *et seq.* of this code.

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

53 "Nonfortified dessert wine" means a wine that is a dessert wine to which brandy or other
54 alcohol has not been added, and which has an alcohol content by volume of at least 15.6 percent
55 and less than or equal to 17 percent.

56 "Person" means and includes an individual, firm, partnership, limited partnership, limited
57 liability company, association, or corporation.

58 "Private wine bed and breakfast" means any business with the sole purpose of providing,
59 in a residential or country setting, a hotel, motel, inn, or other such establishment properly zoned
60 as to its municipality or local ordinances, lodging and meals to its customers in the course of their
61 stay at the establishment, which business also: (1) Is a partnership, limited partnership,
62 corporation, unincorporated association, or other business entity which as part of its general
63 business purpose provides meals on its premises to its members and their guests; (2) is licensed
64 under the provisions of this article as to all of its premises or as to a separate segregated portion of
65 its premises to serve wine to its members and their guests when the sale accompanies the serving
66 of food or meals; and (3) admits only duly elected and approved dues-paying members and their
67 guests while in the company of a member and does not admit the general public.

68 "Private wine restaurant" means a restaurant which: (1) Is a partnership, limited
69 partnership, corporation, unincorporated association, or other business entity which has, as its
70 principal purpose, the business of serving meals on its premises to its members and their guests;
71 (2) is licensed under the provisions of this article as to all of its premises or as to a separate
72 segregated portion of its premises to serve wine to its members and their guests when the sale

73 accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-
74 paying members and their guests while in the company of a member and does not admit the
75 general public. Private clubs that meet the private wine restaurant requirements ~~numbered (1), (2),~~
76 ~~and (3)~~ in this definition shall be considered private wine restaurants: *Provided*, That, a private
77 wine restaurant shall have at least two restrooms: *Provided, however*, That the two restroom
78 requirement may be waived by a written waiver provided from a local health department to the
79 commissioner: *Provided further*, That a private wine restaurant located in an historic building may
80 also be relieved of the two restroom requirement if a historic association or district with jurisdiction
81 over a historic building provides a written waiver of the requirement to the commissioner: *And*
82 *Provided further*, That in no event shall a private wine restaurant have less than one restroom. *And*
83 *Provided further*, That a winery or farm winery holding a private wine restaurant and a multi-
84 capacity winery or farm winery license is not subject to the food service requirements of this
85 subdivision.

86 "Private wine spa" means any business with the sole purpose of providing commercial
87 facilities devoted especially to health, fitness, weight loss, beauty, therapeutic services, and
88 relaxation, and may also be a licensed massage parlor or a salon with licensed beauticians or
89 stylists, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated
90 association, or other business entity which as part of its general business purpose provides meals
91 on its premises to its members and their guests; (2) is licensed under the provisions of this article
92 as to all of its premises or as to a separate segregated portion of its premises to serve up to two
93 glasses of wine to its members and their guests when the sale accompanies the serving of food or
94 meals; and (3) admits only duly elected and approved dues-paying members and their guests
95 while in the company of a member, and does not admit the general public.

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

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

102 "Table wine" means a wine with an alcohol content by volume between 0.5 percent and
103 15.5 percent.

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

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

107 "Varietal wine" means any wine labeled according to the grape variety from which the wine
108 is made.

109 "Vintage wine" or "vintage-dated wine" means wines from which the grapes used to
110 produce the wine are harvested during a particular year, or wines produced from the grapes of a
111 particular harvest in a particular region of production.

112 "Wine" means any alcoholic beverage obtained by the natural fermentation of the natural
113 content of grapes, other fruits, or honey or other agricultural products containing sugar to which no
114 alcohol has been added and includes table wine, hard cider, nonfortified dessert wine, wine
115 coolers, and other similar wine-based beverages. Fortified wine and any product defined as or
116 contained within the definition of nonintoxicating beer under the provisions of §11-16-1 *et seq.*, of
117 this code are excluded from this definition of wine.

118 "Wine specialty shop" means a retailer who deals principally in the sale of table wine,
119 nonfortified dessert wines, wine accessories, and food or foodstuffs normally associated with wine
120 and: (1) Who maintains a representative number of wines for sale in his or her inventory which are
121 designated by label as varietal wine, vintage, generic, and/or according to region of production and
122 the inventory shall contain not less than 15 percent vintage or vintage-dated wine by actual bottle
123 count; and (2) who, any other provisions of this code to the contrary notwithstanding, may maintain
124 an inventory of port, sherry, and Madeira wines having an alcoholic content of not more than 22

125 percent alcohol by volume and which have been matured in wooden barrels or casks. All wine
126 available for sale shall be for off-premises consumption except where wine tasting or wine
127 sampling is separately authorized by this code.

§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. No
7 person except for a winery or farm winery holding a multi-capacity winery or farm winery license
8 may be licensed simultaneously as a supplier and a private wine bed and breakfast, private wine
9 restaurant, or a private wine spa. No person may be licensed simultaneously as a distributor and a
10 private wine bed and breakfast, a private wine restaurant, or a private wine spa. No person except
11 for a winery or farm winery or holding a multi-capacity winery or farm winery license may be
12 licensed simultaneously as a retailer and a private wine bed and breakfast, a private wine
13 restaurant, or a private wine spa. Any person who is licensed to engage in any business
14 concerning the manufacture, sale, or distribution of wine may also engage in the manufacture,
15 sale, or distribution of hard cider without obtaining a separate hard cider license.

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

18 (1) One hundred fifty dollars per year for a supplier's license;

19 (2) Two thousand five hundred dollars per year for a distributor's license and each separate
20 warehouse or other facility from which a distributor sells, transfers, or delivers wine shall be
21 separately licensed and there shall be collected with respect to each location, the annual license
22 fee of \$2,500 as provided in this subdivision;

23 (3) One hundred fifty dollars per year for a retailer's license;

24 (4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any
25 other licensing fees paid by a winery or retailer holding a license. Except for the amount of the
26 license fee and the restriction to sales of winery or farm winery wines, a winery, or farm winery
27 acting as a wine specialty shop retailer is subject to all other provisions of this article which are
28 applicable to a wine specialty shop retailer as defined in §60-8-2 of this code;

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

30 (6) One hundred fifty dollars per year for a private wine bed and breakfast license. Each
31 separate bed and breakfast from which a licensee sells wine shall be separately licensed and
32 there shall be collected with respect to each location the annual license fee of \$150 as provided in
33 this subdivision;

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

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

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

43 (10) No fee for a special one-day license under subsection (p) of this section or for a
44 heritage fair and festival license under subsection (q) of this section;

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

48 (12) Three hundred fifty dollars per year for a multi-capacity winery or farm winery license
49 which enables the holder to operate as a retailer, wine specialty shop, supplier, and direct shipper
50 without obtaining an individual license for each capacity; and

51 (13) Two hundred fifty dollars per year for a hard cider distributor's license. Each separate
52 warehouse or other facility from which a distributor sells, transfers, or delivers hard cider shall be
53 separately licensed and there shall be collected with respect to each location the annual license
54 fee of \$250 as provided in this subdivision: *Provided*, That if a licensee is licensed as a
55 nonintoxicating beer or nonintoxicating beer distributor, then there is no additional license fee to
56 distribute hard cider.

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

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

62 (e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as
63 provided by §11-16-1 *et seq.* of this code: *Provided*, That a delicatessen, a caterer, or party supply
64 store, which is a grocery store as defined in §60-8-2 of this code, and which is licensed as a Class
65 A retail dealer in nonintoxicating beer may be a retailer under this article: *Provided, however*, That
66 any delicatessen, caterer, or party supply store licensed in both capacities shall maintain average
67 monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average
68 monthly sales of nonintoxicating beer.

69 (f) A wine specialty shop under this article may also hold a wine tasting license authorizing
70 the retailer to serve complimentary samples of wine in moderate quantities for tasting. The wine
71 specialty shop shall organize a wine taster's club, which has at least 50 duly elected or approved
72 dues-paying members in good standing. The club shall meet on the wine specialty shop's
73 premises not more than one time per week and shall either meet at a time when the premises are

74 closed to the general public, or meet in a separate segregated facility on the premises to which the
75 general public is not admitted. Attendance at tastings shall be limited to duly elected or approved
76 dues-paying members and their guests.

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

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

86 (2) Notwithstanding subdivision (1) of this subsection, if the applicant for the festival or fair
87 license is the manufacturer of the wine, a winery, or a farm winery as defined in §60-1-5a of this
88 code, and the event is located on the premises of a winery or a farm winery, then the license fee is
89 \$50 per festival or fair.

90 (3) A licensed winery or a farm winery, which has the festival or fair licensee's written
91 authorization and approval from the commissioner, may, in addition to, or in conjunction with the
92 festival and fair licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed
93 ~~three~~six, two-fluid ounce, tastings or samples per patron, or serve wine by the glass for
94 consumption on the premises during the operation of a festival or fair only; and may sell wine by
95 the bottle for on-premises consumption, when consumed by the glass, and off-premises
96 consumption ~~only~~: *Provided*, That for licensed wineries or farm wineries at a licensed festival or
97 fair tastings, samples, on-premises sales, and off-premises sales shall occur under the hours of
98 operation as required in this article, except on Sunday, tastings, samples, and off-premises sales
99 are unlawful between the hours of 2:00 a.m. and 6:00 a.m.

100 (4) A festival or fair license may be issued to a “wine club” as defined in this subdivision for
101 a license fee of \$250. The festival or fair committee or the governing body shall designate a person
102 to organize a club under a name which includes the name of the festival or fair and the words “wine
103 club”. The license shall be issued in the name of the wine club. A licensee may not sell wine as
104 provided in this subdivision until the wine club has at least 50 dues-paying members who have
105 been enrolled, and to whom membership cards have been issued. Thereafter, new members may
106 be enrolled and issued membership cards at any time during the period for which the license is
107 issued. A wine club licensed under the provisions of this subdivision may sell wine only to its
108 members, and in portions not to exceed eight ounces per serving. The sales shall take place on
109 premises or in an area cordoned or segregated so as to be closed to the general public, and the
110 general public shall not be admitted to the premises or area. A wine club licensee under the
111 provisions of this subdivision may serve complimentary samples of wine in moderate quantities for
112 tasting. A wine club may not make wine purchases from a direct shipper where the wine may be
113 consumed on the licensed premises of any Class A private wine retail ~~license~~- licensee or private
114 club. A wine club which violates the provisions of this subdivision is subject to the penalties in this
115 article.

116 (5) A licensed winery or farm winery approved to participate in a festival or fair under the
117 provisions of this section and the licensee holding the license, or the licensed winery or farm
118 winery approved to attend a licensed festival or fair, is subject to all other provisions of this article
119 and the rules and orders of the commissioner relating to the license: *Provided*, That the
120 commissioner may by rule or order provide for certain waivers or exceptions with respect to the
121 provisions, rules, or orders required by the circumstances of each festival or fair, including, without
122 limitation, the right to revoke or suspend any license issued pursuant to this section prior to any
123 notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided*,
124 *however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this
125 code, be waived nor shall any exception be granted with respect to those subsections.

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

128 (7) An unlicensed winery temporarily licensed and meeting the requirements set forth in
129 subsection (q) of this section may conduct the same sampling and sales set forth in subsection (q)
130 of this section at a licensed fair and festival upon approval of the licensee holding the fair and
131 festival license and temporary and limited licensure by the commissioner. An unlicensed winery is
132 subject to the same limits, fees, requirements, restrictions, and penalties set forth in subsection (q)
133 of this section: *Provided*, That the commissioner may by rule or order provide for certain waivers or
134 exceptions with respect to the provisions, rules, or orders required by the circumstances of each
135 festival or fair. The commissioner may revoke or suspend any license issued pursuant to this
136 section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this
137 code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-
138 8-20(d) of this code be waived nor shall any exception be granted with respect to those
139 subsections.

140 (i)(1) The commissioner may issue a special license for the retail sale of wine in a
141 professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles
142 the licensee to sell and serve wine for consumption in a professional baseball stadium. For the
143 purpose of this subsection, "professional baseball stadium" means a facility constructed primarily
144 for the use of a major or minor league baseball franchisee affiliated with the National Association
145 of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league
146 baseball park. Any special license issued pursuant to this subsection shall be for a term beginning
147 on the date of issuance and ending on the next following June 30, and its fee is \$250 regardless of
148 the length of the term of the license. The application for the special license shall contain
149 information required by the commissioner and must be submitted to the commissioner at least 30
150 days prior to the first day when wine is to be sold at the professional baseball stadium. The special
151 license may be issued in the name of the baseball franchisee or the name of the primary food and

152 beverage vendor under contract with the baseball franchisee. These sales must take place within
153 the confines of the professional baseball stadium. The exterior of the area where wine sales may
154 occur shall be surrounded by a fence or other barrier prohibiting entry except upon the
155 franchisee's express permission, and under the conditions and restrictions established by the
156 franchisee, so that the wine sales area is closed to free and unrestricted entry by the general
157 public.

158 (2) A license issued under this subsection and the licensee holding the license are subject
159 to all other provisions of this article and the rules and orders of the commissioner relating to the
160 special license: *Provided*, That the commissioner may by rule or order grant certain waivers or
161 exceptions to those rules or orders required by the circumstances of each professional baseball
162 stadium. The commissioner may revoke or suspend any license issued pursuant to this section
163 prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided*,
164 *however*, That under no circumstances may §60-8-20(c) or §60-8-20(d) of this code be waived nor
165 shall any exception be granted concerning those subsections.

166 (3) The commissioner may propose legislative rules for promulgation in accordance with
167 §29A-3-1 *et seq.* of this code to implement this subsection.

168 (j) A license to sell wine granted to a private wine bed and breakfast, private wine
169 restaurant, private wine spa, or a private club under the provisions of this article entitles the
170 operator to sell and serve wine, for consumption on the premises of the licensee, when the sale
171 accompanies the serving of food or a meal to its members and their guests in accordance with the
172 provisions of this article: *Provided*, That a licensed private wine bed and breakfast, private wine
173 restaurant, private wine spa, or a private club may permit a person over 21 years of age to
174 purchase wine, consume wine, and recork or reseal, using a tamper resistant cork or seal, up to
175 two separate bottles of unconsumed wine in conjunction with the serving of food or a meal to its
176 members and their guests in accordance with the provisions of this article and in accordance with
177 rules promulgated by the commissioner for the purpose of consumption of the wine off premises:

178 *Provided, however,* That a licensed private wine restaurant or a private club may offer for sale, for
179 consumption off the premises, sealed bottles of wine to its customers provided that no more than
180 one bottle is sold per each person over 21 years of age, as verified by the private wine restaurant
181 or private club, for consumption off the premises. The licensees may keep and maintain on their
182 premises a supply of wine in quantities appropriate for the conduct of operations thereof. Any sale
183 of wine is subject to all restrictions set forth in §60-8-20 of this code. A private wine restaurant may
184 also be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.*
185 of this code.

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

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

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

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

198 (o) A wine specialty shop under this article may also hold a wine sampling license
199 authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine
200 specialty shop location during regular hours of business. The wine specialty shop may serve up to
201 ~~three~~six complimentary samples of wine, consisting of no more than two fluid ounces each, to any
202 one consumer ~~in one~~ per day. Persons serving the complimentary samples shall be 21 years of
203 age or older and an authorized representative of the licensed wine specialty shop, winery, farm

204 winery, or a representative of a distributor or registered supplier. Distributor and supplier
205 representatives attending wine sampling events shall register with the commissioner. No licensee,
206 employee, or representative may furnish, give, sell, or serve complimentary samples of wine to
207 any person less than 21 years of age or to a person who is physically incapacitated due to the
208 consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and
209 secure permission from the commissioner for all wine sampling events 30 days prior to the event.
210 Wine sampling events may not exceed six hours per calendar day. Licensees shall purchase all
211 wines used during these events from a licensed farm winery or a licensed distributor.

212 (p) The commissioner may issue special one-day licenses to duly organized, nonprofit
213 corporations and associations allowing the sale and serving of wine, and may, if applicable, also
214 allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only,
215 when raising money for athletic, charitable, educational, or religious purposes. "Auction or
216 auctioning", for the purposes of this subsection, means any silent, physical act, or verbal bid
217 auction, whether or not the auction requires in-presence bidding or online Internet-based
218 electronic bidding through a secure application or website, but shall not include any action in
219 violation of §47-20-10, §47-20-11, or §61-10-1 *et seq.* of this code. The license application shall
220 contain information required by the commissioner and shall be submitted to the commissioner at
221 least 30 days prior to the event. Accompanying the license application, the applicant shall submit a
222 signed and notarized statement that at least 80 percent of the net proceeds from the charitable
223 event will be donated directly to the nonprofit corporation or organization. Wines used during these
224 events may be donated by, or purchased from, a licensed retailer, a distributor, winery, or a farm
225 winery. A licensed winery or farm winery which is authorized in writing by a representative of the
226 duly organized, nonprofit corporation or association which has obtained the one-day license; is in
227 good standing with the state; and obtains the commissioner's approval prior to the one-day license
228 event may, in conjunction with the one-day licensee, exhibit, conduct complimentary tastings, or
229 sell samples not to exceed ~~three~~six, two-fluid ounce tastings or samples per patron, sell wine by

230 the glass or by the bottle, when consumed by the glass, for consumption on the premises during
231 the operation of the one-day license event; and may sell certain sealed wine bottles manufactured
232 by the licensed winery or farm winery for off-premises consumption: *Provided*, That for a licensed
233 winery or farm winery at a licensed one-day event, the tastings, samples, on-premises sales, and
234 off-premises sales shall occur under the hours of operation permitted by this article, except on
235 Sunday, tastings, samples, on-premises sales, and off-premises sales are unlawful between the
236 hours of 2:00 a.m. and 6:00 a.m., from the one-day licensee's submitted floor plan for the event
237 subject to the requirements in the code and rules. Under no circumstances may the provisions of
238 §60-8-20(c) or §60-8-20(f) of this code be waived nor may any exception be granted with respect
239 to those subsections.

240 (q)(1) In addition to the authorization granted to licensed wineries and farm wineries in
241 subsections (h) and (p) of this section, an unlicensed winery, regardless of its designation in
242 another state, ~~but~~ that is duly licensed in its domicile state, may pay a \$150 nonrefundable and
243 ~~nonprorated~~ non-prorated fee and submit an application for temporary licensure on a one-day
244 basis for temporary sampling and sale of wine in sealed containers for off-premises consumption
245 at a special one-day license nonprofit event.

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

254 (3) The applicant winery shall include a list of all wines proposed to be temporarily sampled
255 and temporarily sold by the glass or bottle, when consumed by the glass, for on-premises

256 consumption or in sealed containers for off-premises consumption at a special one-day license for
257 a nonprofit event so that the wines may be reviewed in the interest of public health and safety.
258 Once approved, the submitted wine list creates a temporary wine brand registration for up to two
259 special one-day licenses for a nonprofit event for no additional fee.

260 (4) An applicant winery that receives this temporary special one-day license for a nonprofit
261 event shall provide the commissioner a signed and notarized written agreement acknowledging
262 that the applicant winery understands its responsibility to pay all municipal, local, and sales taxes
263 applicable to the sale of wine in West Virginia.

264 (5) An application must be submitted per special one-day license for a nonprofit event the
265 applicant winery desires to attend, and the license fee shall cover up to two special one-day
266 license for nonprofit events before an additional fee ~~would be~~ is required. In no circumstance
267 would the winery be permitted to attend more than four special one-day licensed events. Any
268 applicant or unlicensed winery desiring to attend more than four special one-day license for
269 nonprofit events per year or otherwise operate in West Virginia would need to seek appropriate
270 licensure as a winery or a farm winery in this state.

271 (6) Notwithstanding the provisions of this article and requirements for licensure, wine
272 brand registration, payment of wine liter tax, and the winery's appointment of suppliers and
273 distributors, this temporary special one-day license for a nonprofit event, once granted, permits a
274 winery to operate in this limited capacity only at the approved specific, special one-day license for
275 a nonprofit event subject to the limitations contained in this section.

276 (7) The applicant winery shall also apply for and receive a transportation permit to legally
277 transport wine in the state per §60-6-12 of this code.

278 (8) The applicant winery is subject to all applicable violations and/or penalties under this
279 article and the legislative rules that are not otherwise excepted by this subsection: *Provided*, That
280 the commissioner may by rule or order provide for certain waivers or exceptions with respect to the
281 provisions, rules, or orders required by the circumstances of each festival or fair. The

282 commissioner may revoke or suspend any license issued pursuant to this article, prior to any
283 notice or hearing.

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

292 (s)(1) The commissioner may issue a special license for the retail sale of wine in a college
293 stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and
294 serve wine for consumption in a college stadium. For the purpose of this subsection, "college
295 stadium" means a facility constructed primarily for the use of a Division I, II, or III college that is a
296 member of the National Collegiate Athletic Association, or its successor, and used as a football,
297 basketball, baseball, soccer, or other Division I, II, or III sports stadium. A special license issued
298 pursuant to this subsection shall be for a term beginning on the date of its issuance and ending on
299 the next following June 30, and its fee is \$250 regardless of the length of the term of the license.
300 The application for the special license shall contain information required by the commissioner and
301 must be submitted to the commissioner at least 30 days prior to the first day when wine is to be
302 sold. The special license may be issued in the name of the National Collegiate Athletic Association
303 Division I, II, or III college or university or the name of the primary food and beverage vendor under
304 contract with that college or university. All sales must take place within the confines of the college
305 stadium: *Provided*, That the exterior of the area where wine sales may occur shall be surrounded
306 by a fence or other barrier prohibiting entry except upon the college or university's express

307 permission, and under the conditions and restrictions established by the college or university, so
308 that the wine sales area is closed to free and unrestricted entry by the general public.

309 (2) A license issued under this subsection and the licensee are subject to the other
310 requirements of this article and the rules and orders of the commissioner relating to the special
311 license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions
312 to those rules or orders as required by the circumstances of each the college stadium. The
313 commissioner may revoke or immediately suspend any license issued pursuant to this section
314 prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided*,
315 *however*, That §60-8-20(c) or §60-8-20(d) of this code may not be waived, nor shall any exception
316 be granted concerning those subsections.

317 (3) The commissioner may propose legislative rules for promulgation in accordance with
318 §29A-3-1 *et seq.* of this code to implement this subsection.

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

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

9 (b) *Sales of wine.* — A licensed winery or farm winery with its principal place of business
10 and manufacture located in the State of West Virginia may, when licensed under this section, offer
11 only wine manufactured by the licensed winery or farm winery for retail sale to customers from the
12 winery or farm winery's licensed premises for consumption off of the licensed premises only in the

13 form of original container sealed wine kegs, wine bottles, or wine cans, or also a sealed wine
14 growler for personal consumption, and not for resale. A licensed winery or farm winery may not
15 sell, give, or furnish wine for consumption on the premises of the principal place of business and
16 manufacture located in the State of West Virginia, except for the limited purpose of complimentary
17 samples as permitted in subsection (c) of this section or unless separately licensed for on
18 premises sales in accordance with §60-4-3b of this code or separately licensed as a private wine
19 restaurant or a private manufacturer club.

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

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

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

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

34 (g) *Wine Growler defined.* — For purposes of this section and section §60-8-6d of the
35 code, "wine growler" means a container or jug that is made of glass, ceramic, metal, or other
36 material approved by the commissioner, that may be no larger than 128 fluid ounces in size and is
37 capable of being securely sealed. The growler may be used by an authorized licensee for
38 purposes of off-premises sales only of wine for personal consumption, and not for resale. The wine

39 served and sold in a sealed wine growler may include ice or water mixed with the wine to create a
40 frozen alcoholic beverage. Any frozen alcoholic beverage machine used for filling wine growlers
41 shall be sanitized daily and shall be under control and served by the licensee from the secure area.
42 Notwithstanding any other provision of this code to the contrary, a securely sealed wine growler is
43 not an open container under state and local law. A wine growler with a broken seal is an open
44 container under state and local law unless it is located in an area of the motor vehicle physically
45 separated from the passenger compartment. For purpose of this article, a secure seal means
46 using a tamper evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve
47 extending around the cap or lid of wine growler to form a seal that shall be broken when the
48 container is opened; or (2) A screw top cap or lid that breaks apart when the wine growler is
49 opened.

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

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

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

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

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

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

**§60-8-8. Permitting West Virginia Farm Wineries with Class A licenses to sell and serve
wine by the glass and bottle at West Virginia Fairs and Festivals.**

1 All Class I, II, III, or IV West Virginia Farm Wineries also possessing a Class A license may
2 serve and sell wine by the glass or by the bottle at any fair or festival in the state of West Virginia if
3 the fair or festival licensee grants the Class I, II, III, or IV West Virginia Farm Winery or Farm
4 Wineries permission to do so.

§60-8-32a. Where wine may be sold and consumed for on-premises consumption.

1 (a) With prior approval of the commissioner, a Class A wine licensee may sell, serve, and
2 furnish wine for on premises consumption in a legally demarcated area which may include a
3 temporary private wine outdoor dining area or a temporary private wine outdoor street dining area.

4 A temporary private wine outdoor street area shall be approved by the municipal government or
5 county commission in which the licensee operates. The commissioner shall develop and make
6 available an application form to facilitate the purposes of this subsection.

7 (b) The Class A wine licensee shall submit to a municipality or county commission for the
8 approval of the private wine outdoor dining area or private wine outdoor street dining area and
9 submit to the municipality or county commission a revised floorplan requesting to sell wine, subject
10 to the commissioner's requirements, in an approved and bounded outdoor area. For private wine
11 outdoor street dining or private wine outdoor dining the approved and bounded outdoor area need
12 not be adjacent to the licensee's licensed premises, but in close proximity and under the licensee's
13 control and with right of ingress and egress. For purposes of this section, "close proximity," means
14 an available area within 150 feet of the licensee's licensed premises.

15 (c) This private wine outdoor dining or private wine outdoor street dining may be operated
16 in conjunction with a private outdoor dining or private outdoor street dining area set forth in §60-7-
17 8d of this code, and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor
18 street dining set forth in §11-16-9 of this code.

19 (d) For purposes of this section, "private wine outdoor dining and private wine outdoor
20 street dining" include dining areas that are:

21 (1) Outside and not served by an HVAC system for air handling services and use outside
22 air;

23 (2) Open to the air; and

24 (3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally
25 approve a partial enclosure with up to three temporary or fixed walls.

26 Any areas where seating is incorporated inside a permanent building with ambient air
27 through HVAC is not considered outdoor dining pursuant to this subsection.

28 (e) Class A licensees licensed for on-premises sales shall provide food, which may be pre-
29 packaged food not requiring kitchen preparation, or a meal along with sealed wine in the original

30 container or a sealed wine growler sales and service as set forth in this section and in §60-8-3 of
31 this code, to a patron who is in-person or in-vehicle while picking up food and sealed wine in the
32 original containers or sealed wine growlers ordered-to-go, subject to verification that the
33 purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as
34 otherwise specified in this article.

35 (f) Class I, II, III, and IV West Virginia Farm Wineries also possessing a Class A license
36 may serve and sell wine by the glass or by the bottle in accordance with §60-8-32a(a) through (e).

ARTICLE 8A. MANUFACTURE AND SALE OF HARD CIDER.

§60-8A-5. Winery or farm winery licensee's authority to manufacture, sell, and provide complimentary samples; growler sales; advertisements; taxes; fees; rulemaking.

1 (a) Sales of hard cider. — A licensed winery or farm winery with its principal place of
2 business or manufacturing facility located in the State of West Virginia may offer hard cider
3 manufactured by the licensed winery or farm winery for retail sale to customers from the winery's
4 or farm winery's licensed premises for consumption off of the licensed premises only in approved
5 and registered hard cider kegs, bottles, or cans, or also sealed wine growlers for personal
6 consumption and not for resale. A licensed winery or farm winery may not sell, give, or furnish hard
7 cider for consumption on the premises of the principal place of business or manufacturing facility
8 located in the State of West Virginia, except for the limited purpose of ~~complimentary~~ samples as
9 permitted in subsection (b) of this section. "Wine Growler" has the meaning set forth in §60-8-6c(g)
10 of this code.

11 (b) ~~Complimentary~~ Samples. — A licensed winery or farm winery with its principal place of
12 business or manufacturing facility located in the State of West Virginia may offer ~~complimentary~~
13 samples of hard cider manufactured at the winery's or farm winery's principal place of business or
14 manufacturing facility located in the State of West Virginia. The ~~complimentary~~ samples may be no
15 greater than two fluid ounces per sample per patron, and a sampling shall not exceed six
16 complimentary two-fluid ounce samples per patron per day. A licensed winery or farm winery

17 providing ~~complimentary~~ samples shall provide ~~complimentary~~ food, which may be pre-packaged
18 food not requiring kitchen preparation, items to the patron consuming the ~~complimentary~~ samples;
19 and prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of
20 age or older and that the patron is not noticeably or visibly intoxicated.

21 (c) Retail sales. — Every licensed winery or farm winery under this section shall comply
22 with all the provisions applicable to wine retailers when conducting sales of hard cider and is
23 subject to all applicable requirements and penalties. In the interest of promoting tourism
24 throughout the state, every licensed winery or farm winery manufacturing cider in this state is
25 authorized, with a limited off-site retail privilege at private fair and festivals, for off-premises
26 consumption sales of only the winery or farm winery's sealed hard cider. At least five days prior to
27 an approved private fair and festival, an authorized winery or farm winery shall provide a copy of a
28 written agreement to sell only hard cider manufactured by the licensed winery or farm winery at the
29 private fair and festival's licensed premises. If approved, an authorized winery or farm winery may
30 conduct off-premises consumption sales of their hard cider from a designated booth at the private
31 fair and festival as set forth in §60-7-8a of this code. All authorized and approved wineries and
32 farm wineries' off-premises consumption sales of hard cider shall comply with all retail
33 requirements in §60-8-1 *et seq.* of this code and §60-8A-1 *et seq.* of this code, and specifically with
34 respect to all markups, taxes, and fees.

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

39 (e) Advertising. — A licensed winery or farm winery may advertise a particular brand or
40 brands of hard cider produced by the licensed winery or farm winery and the price of the hard cider
41 subject to state and federal requirements or restrictions. The advertisement may not encourage
42 intemperance or target minors.

43 (f) Growler requirements. — A licensed winery or farm winery, if offering wine growler filling
44 services, shall meet the filling, labeling, sanitation, and all other wine growler requirements in §60-
45 8-6c of this code.

46 (g) Fee. — There is no additional fee for a licensed winery or farm winery authorized under
47 §60-8-6c of this code, to sell wine growlers, if a winery or farm winery only desires to sell hard cider
48 in the wine growler, and no other wine, then the annual non-prorated and nonrefundable license
49 fee is \$50.

NOTE: The purpose of this bill is to revise and update the code regulating farm wineries in West Virginia to allow the state's farm winery industry to be more competitive with farm wineries in adjacent states.

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