

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 511

SENATORS TRUMP AND BOSO, *original sponsors*

[Originating in the Committee on the Judiciary;

Reported on February 21, 2019]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section
2 designated §60-1-5c; to amend and reenact §60-4-3b of said code; to amend and reenact
3 §60-8-3 and §60-8-17 of said code; and to amend said code by adding thereto two new
4 sections, designated §60-8-3a and §60-8-6b, all relating to wine production and wine sales
5 generally; creating alternating wine proprietorships for wineries and farm wineries and
6 setting forth requirements for the proprietorships; authorizing farm entities in
7 proprietorships to manufacture and sell wine; authorizing certain groceries to sell wine
8 through mobile applications and web-based internet sales with at-store pickup; clarifying
9 tasting, sampling, and sale procedures and requirements for wineries and farm wineries;
10 permitting wineries or farm wineries to sell wine for on-premises and off-premises
11 consumption at festivals and fairs; establishing a wine club license for festivals and fairs
12 and setting forth requirements; permitting certain charitable events to auction wine bottles
13 for off-premises consumption; defining terms; limiting number of charitable auction
14 licenses; permitting the sale of wine in Division II and III college stadiums; authorizing wine
15 specialty shops to obtain an additional license privilege to deliver wine with gift baskets
16 and setting forth requirements; providing a 30-day requirement to issue or deny a
17 completed license application; creating a reactivation fee for licensees that fail to timely
18 file their renewal applications and pay their license fees; and authorizing the commissioner
19 to propose rules for promulgation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5c. Alternating wine proprietorships; requirements and limitations.

1 (a) Notwithstanding the provisions of §60-1-5 of this code, a licensed winery or farm winery
2 may be a party to an alternating wine proprietorship agreement subject to the provisions of this
3 section. As used in this section, “alternating wine proprietorship agreement” means an agreement

4 between a licensed winery or farm winery and a farm entity which allows the farm entity to use
5 the premises of the licensed farm winery to produce wine.

6 (b) For an alternating wine proprietorship agreement to be lawful:

7 (1) The farm winery and the farm entity must be in compliance with applicable state laws
8 and rules promulgated thereunder;

9 (2) The agreement must be between a licensed winery or farm winery and a farm entity
10 located and operating in this state;

11 (3) The farm entity must produce agricultural products containing sugar as certified by the
12 Agriculture Commissioner and required by law;

13 (4) Wines produced by the parties must be maintained in separate bonded areas and shall
14 not be comingled;

15 (5) The farm entity participating in the agreement must separately meet all federal and
16 state requirements for a winery or farm winery;

17 (6) The farm entity party to the agreement may not produce more than 50,000 gallons of
18 wine and nonfortified dessert wine;

19 (7) Wine produced by the farm entity party to an agreement must be produced exclusively
20 by natural fermentation;

21 (8) If port, sherry, or madeira wines are produced by the farm entity party to the agreement,
22 a minimum of 25 percent of the agricultural products used to make the wine must be produced on
23 the farm entity's property and no more than 25 percent of the agricultural products used may
24 come from an out-of-state source; and

25 (9) Port, sherry, or madeira wine produced by a party to an alternating wine proprietorship
26 agreement may not exceed 22 percent alcohol by volume and must be matured in wooden barrels
27 or casks.

28 (c) The commissioner shall propose rules for promulgation in accordance with §29A-3-1
29 et seq. of this code necessary to effectuate the provisions of this section.

ARTICLE 4. LICENSES.

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

1 (a) ~~Sales of wine.~~— An operator of a winery or farm winery may offer wine produced by
2 the winery, ~~or farm winery,~~ or a farm entity authorized by §60-1-5c of this code for retail sale to
3 customers from the winery or farm winery for consumption off the premises only. Except for free
4 complimentary samples offered pursuant to §60-6-1 of this code, customers are prohibited from
5 consuming any wine on the premises of the winery, ~~or farm winery,~~ or a farm entity authorized by
6 §60-1-5c of this code unless such winery, ~~or farm winery,~~ or farm entity has obtained a multi-
7 capacity winery or farm winery license: *Provided*, That a licensed winery or farm winery may offer
8 complimentary samples per this subsection of wine manufactured by that licensed winery or farm
9 winery for consumption on the premises only on Sundays beginning at 10:00 a.m. in any county
10 in which the same has been approved as provided in §7-1-3ss of this code.

11 **(b) Complimentary samples allowed by the provisions of this section may not exceed two**
12 **fluid ounces and no more than three such samples may be given to a patron in any one day.**

13 **(c) Complimentary samples may be provided only for on-premises consumption.**

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

17 **(e) A winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code holding**
18 **a multicapacity license and a private wine restaurant license may offer wine by the drink or glass**
19 **in a private wine restaurant located on the property of the winery, farm winery, or farm entity**
20 **licensed pursuant to §60-1-5c of this code.**

21 **(b) Retail sales.**— **(f)** Every licensed winery or farm winery shall comply with the provisions
22 of §60-3-1 *et seq.*, §60-4-1 *et seq.*, and §60-8-1 *et seq.* of this code as applicable to wine retailers,
23 wineries, and suppliers when properly licensed in such capacities.

24 **(c) Payment of taxes and fees.**—

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

28 (2) Each winery or farm winery acting as its own supplier shall submit to the Tax
29 Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in
30 §60-8-1 *et seq.* of this code.

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

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

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

40 ~~(d) Advertising.~~ — (h) A winery or farm winery may advertise a particular brand or brands
41 of wine produced by it and the price of the wine is subject to federal requirements or restrictions.

42 ~~(e) (i) Limitations on licensees.~~ — A winery or farm winery must maintain a separate winery
43 or farm winery supplier, retailer, and direct shipper licenses when acting in one or more of those
44 capacities and must pay all associated license fees, unless such winery or farm winery holds a
45 license issued pursuant to the provisions of §60-8-3(b)(12) of this code. A winery or farm winery,
46 if holding the appropriate licenses or a multicapacity winery or farm winery license, may act as its
47 own supplier; retailer for off-premises consumption of its wine as specified in §60-6-2 of this code;
48 private wine restaurant; and direct shipper for wine produced by the winery or farm winery. All
49 wineries must use a distributor to distribute and sell their wine in the state, except for farm
50 wineries. No more than one winery or farm winery license may be issued to a single person or

51 entity and no person may hold both a winery and a farm winery license. Wineries or farm wineries
52 may enter into alternating wine proprietorship agreements pursuant to §60-1-5c of this code.

53 ~~(f)~~(j) For purposes of this section, terms will have the same meaning as provided in §8-13-
54 7 of this code.

ARTICLE 8. SALE OF WINES.

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

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

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

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

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

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

20 (4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any

21 other licensing fees paid by a winery or retailer holding a license. ~~except~~ Except for the amount
22 of the license fee and the restriction to sales of winery or farm winery wines, a winery, or farm
23 winery acting as a wine specialty shop retailer is subject to all other provisions of this article which
24 are applicable to a wine specialty shop retailer as defined in §60-8-2 of this code;

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

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

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

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

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

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

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

45 (12) Three hundred dollars per year for a multicapacity winery or farm winery license which
46 ~~shall enable~~ enables the holder to operate as a retailer, wine specialty shop, supplier, and direct

47 shipper without obtaining an individual license for each capacity.

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

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

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

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

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

71 (h)(1) The commissioner may issue a ~~special~~ license for the retail sale of wine at any
72 festival or fair which is endorsed or sponsored by the governing body of a municipality or a county

73 commission. Such ~~special~~ license shall be issued for a term of no longer than 10 consecutive
74 days and the fee ~~therefor~~ for the license shall be \$250 regardless of the term of the license. ~~unless~~
75 ~~the applicant is the manufacturer of said wine on a winery or a farm winery as defined in section~~
76 ~~five-a, article one of this chapter, in which event the fee shall be \$50 if the event is held on the~~
77 ~~premises of the winery or farm winery~~ The application for the license shall contain information as
78 ~~the commissioner may reasonably require~~ required by the commissioner and shall be submitted
79 to the commissioner at least 30 days prior to the first day when wine is to be sold at the festival
80 or fair.

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

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

95 (4) A special festival or fair license may be issued other than to a winery or a farm winery,
96 but may be issued to a "wine club" as defined herein below in this subdivision for a license fee of
97 \$250. The festival or fair committee or the governing body shall designate a person to organize a
98 club under a name which includes the name of the festival or fair and the words "wine club". The

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

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

123 (6) A license issued under the provisions of this ~~subsection~~ section and the licensee
124 holding the license ~~is~~ are not subject to the provisions of subsection (g) of this section.

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

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

151 (3) The commissioner ~~has the authority to~~ may propose rules for ~~legislative approval~~
152 promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

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

173 (k) With respect to subsections (h), (i), (j), (o), and (p) of this section, the commissioner
174 shall ~~promulgate legislative~~ propose rules for promulgation in accordance with ~~the provisions of~~
175 §29A-1-1 *et seq.* of this code, ~~with regard~~ including, but not limited to, the form of the applications
176 and the suitability of both the applicant and location of the licensed premises ~~and other legislative~~

177 ~~rules deemed necessary to carry the provisions of the subsections into effect.~~

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

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

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

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

201 (p) The commissioner may issue special one-day licenses to duly organized, nonprofit
202 corporations and associations allowing the sale and serving of wine, and may, if applicable, also

203 allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only,
204 when raising money for athletic, charitable, educational, or religious purposes. "Auction or
205 auctioning", for the purposes of this subsection, means any silent, physical act, or verbal bid
206 auction, whether or not such auction requires in-presence bidding or online internet-based
207 electronic bidding through a secure application or website, but shall not include any action in
208 violation of §47-20-10, §47-20-11, or §61-10-1 et seq. of this code. The license application shall
209 contain information ~~as the commissioner may reasonably require~~ required by the commissioner
210 and shall be submitted to the commissioner at least 30 days prior to the event. Wines used during
211 these events may be donated by, or purchased from, a licensed retailer, a distributor, winery, or
212 a farm winery. A licensed winery or farm winery which is authorized in writing by a representative
213 of the duly organized, nonprofit corporation and association which has obtained the one-day
214 license; is in good standing with the state; and obtains the commissioner's approval prior to the
215 one-day license event may, in conjunction with the one-day licensee, exhibit, conduct
216 complimentary tastings, or sell samples not to exceed of three, two-fluid ounce tastings or
217 samples per patron, for consumption on the premises during the operation of the one-day license
218 event; and may sell certain sealed wine bottles manufactured by the licensed winery or farm
219 winery for off-premises consumption: *Provided,* That for a licensed winery or farm winery at a
220 licensed one-day event, the tastings, samples and off-premises sales shall occur under the hours
221 of operation as required in this article, except on Sunday, tastings, samples, and off-premises
222 sales are unlawful between the hours of 2:00 a.m. and 10:00 a.m., from the one-day licensee's
223 submitted floor plan for the event subject to the requirements in the code and rules. Under no
224 circumstances may the ~~provision~~ provisions of §60-8-20(c) or §60-8-20(f) of this code be waived
225 nor may any exception be granted with respect thereto to those subsections. No more than six
226 licenses may be issued to any single licensee during any calendar year.

227 (q) The commissioner may issue special licenses to heritage fairs and festivals allowing
228 the sale, serving, and sampling of wine from a licensed farm winery. The license application shall

229 contain information required by the commissioner and shall be submitted to the commissioner at
230 least 30 days prior to the event. Wines used during these events may be donated by or purchased
231 from a licensed farm winery. Under no circumstances may the provision of §60-8-20(c) of this
232 code be waived nor may any exception be granted with respect thereto. The commissioner shall
233 propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to
234 implement the provisions of this subsection.

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

253 (2) A license issued under this subsection and the licensee are subject to the other
254 requirements of this article and the rules and orders of the commissioner relating to the special

255 license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions
256 to those rules or orders as the circumstances of each the college stadium may require, including,
257 without limitation, the right to revoke or immediately suspend any license issued pursuant to this
258 section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code:
259 *Provided, however*, That §60-8-20(c) or §60-8-20(d) of this code may not be waived, nor shall any
260 exception be granted concerning those subsections.

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

§60-8-3a. Certain wine specialty shops operating as grocery stores authorized to deliver wine curbside, mobile applications, or web-based sales allowed; permits; fees.

1 A wine specialty shop which is licensed to sell wine off premises and which operates a
2 grocery store containing over \$100,000 of fresh produce and saleable food and food products fit
3 for human consumption in a combination of displayed and stored inventory may apply for a Class
4 B license privilege granting the licensee the ability to complete the sale of such wine in the original
5 sealed container for off-premises consumption to a person purchasing wine ordered via a mobile
6 application or web-based software program and picking up the wine from the licensee while in a
7 vehicle:

8 (a) If the vehicle is parked in a licensed parking area which is contiguous to the Class B
9 licensee's licensed premises; or

10 (b) If the vehicle is parked in a licensed parking area which is within 500 feet of the Class
11 B licensee's licensed premises;

12 (c) The parking area referenced in subdivision (b) of this section shall be designated by
13 signage solely for the use of persons who have previously ordered items, including, but not limited
14 to, wine using a mobile application or web-based software program;

15 (d) No wine may be loaded into a vehicle under this section unless the wine specialty shop
16 or the licensee's staff have verified that both the person placing the order and the person picking

17 up the order, if different from the person placing the order, is 21 years of age or older and is not
18 noticeably intoxicated;

19 (e) To operate under this section a wine specialty shop must be in good standing with the
20 commissioner, apply, qualify, pay the Class B license privilege fee, and obtain the permit for the
21 Class B licensee privilege for wine at a designated parking area. The Class B license privilege
22 permit is nonrefundable and a nonprorated annual fee is \$250;

23 (f) The licensee is subject to all requirements, penalties, and sanctions of this article.

§60-8-6b. Deliveries by licensed wine specialty shop.

24 (a) A wine specialty shop with a current active license and in good standing with the
25 commissioner may apply for the additional license privilege of delivering wine with a gift basket,
26 to the purchaser or other person designated by the purchaser, as provided in this section.

27 (b) The wine specialty shop:

28 (1) May only deliver in the county where the wine specialty shop is located with all sales
29 and municipal taxes accounted for and paid, as long as such county is not a dry county or such
30 county does not contain dry local option areas. The delivery of wine is not permitted in a dry
31 county or the dry local option areas;

32 (2) Shall ensure that all wine delivered is sealed in the original container and is clearly and
33 conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON 21
34 OR OLDER REQUIRED FOR DELIVERY";

35 (3) Shall provide proof or records to the commissioner by filing monthly returns to the
36 commissioner, on a form as prescribed by the commissioner, and the Tax Commissioner of all
37 deliveries of wine which were purchased by and delivered to a person at least 21 years of age in
38 the wine specialty shop's county of operation;

39 (4) Shall only deliver wine with a gift basket to addresses within the State of West Virginia
40 and within the requirements noted in this subsection;

41 (5) Shall not deliver in excess of two cases of wine with a gift basket per month to any

42 person or address;

43 (6) Shall not deliver wine to any private club, private wine restaurant, wine retailer, private
44 wine bed and breakfast, or private wine spa; and

45 (7) May only deliver wine with a gift basket for personal use and not for resale to a person.
46 The wine shall not be delivered and left at any address without verifying a person's identification
47 as required in this section.

48 (c) The nonprorated, nonrefundable fee for the additional wine specialty shop delivery
49 license privilege is \$250.

50 (d) The wine delivered by the authority of this section must be purchased in-person with a
51 face-to-face transaction at the shop; may not be ordered or purchased by telephonic, electronic,
52 or web-based wine ordering; and must be delivered by an officer or employee of the wine specialty
53 shop licensee who is 21 years of age or older. Nonlicensed third parties may not deliver wine with
54 a gift basket on behalf of a licensed wine specialty shop.

55 (e) Any vehicle delivering wine in a gift basket shall meet the permit requirements set forth
56 in this chapter.

57 (f) The commissioner may propose rules for promulgation in accordance with §29A-3-1 et
58 seq. of this code to effectuate the purposes of this section.

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

1 (a) Upon receipt of the completed application, fee, and bond if required, the commissioner
2 shall conduct ~~such any~~ investigation as he or she may deem considers necessary to determine
3 the accuracy of the matters contained in the completed application. For the purposes of
4 conducting such investigation, the commissioner may withhold the granting or refusal to grant a
5 license for a period not to exceed 30 days or until the applicant has completed the conditions set
6 forth in §60-8-16 of this code. If it appears that the applicant is a suitable person, is located at a
7 suitable premise, there is no false statement, no material misrepresentations, no hidden
8 ownership, no persons with an undisclosed pecuniary interest contained in the application, and

9 that the issuance of the license would not be in conflict with any of the provisions of this chapter,
10 the commissioner shall issue the license. Otherwise the commissioner shall refuse to issue such
11 license.

12 (b) The commissioner shall refuse the license of any applicant if he or she finds that such
13 applicant is not a suitable person, ~~or~~ that the place of business of such applicant is not a suitable
14 place, or that such applicant has not complied with the provisions of this chapter. Upon refusal to
15 issue such license, the commissioner shall enter an order refusing such application. ~~which~~ The
16 refusal is final unless a hearing is requested in accordance with the provisions of §60-8-18 of this
17 code. When such refusal becomes final the commissioner shall ~~forthwith~~ immediately refund to
18 the applicant his or her fees and bond accompanying ~~said~~ the application.

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

22 (d) A licensee that fails to complete a renewal application and make payment of its annual
23 license fee in renewing its license on or before June 30 of any subsequent year, after initial
24 application, shall be charged an additional \$150 reactivation fee. The licensee must pay the
25 applicable full-year annual license fee and the reactivation fee prior to the processing of any
26 renewal application. A licensee who continues to operate upon the expiration of its license is
27 subject to all fines, penalties, and sanctions available in §11-16-23 of this code, as determined by
28 the commissioner.

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