

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Originating

House Bill 3149

BY DELEGATES SPONAUGLE, HARDY, WILLIAMS, SKAFF,
HARTMAN, ELLINGTON, ROWE, BARRETT, CRISS AND
BATES

[Originating in the Committee on Finance; Reported
on February 25, 2019.]

1 A BILL to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended; and to
2 add thereto a new section designated §60-8-4a, all relating to expanding the ability of hard
3 cider manufactures to produce hard cider in this state; establishing a new tax classification
4 for hard cider as a type of wine manufactured in this state; permitting federal tax credits to
5 apply to the state tax for those producers who qualify; creating a fund for tax deposits;
6 requiring reports to the Tax Commissioner; and permitting a wine manufacturer to serve
7 full pours of wine at festivals and tastings for which it is properly licensed.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. SALE OF WINES.

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

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

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

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

15 (2) Twenty-five hundred dollars per year for a distributor's license and each separate
16 warehouse or other facility from which a distributor sells, transfers or delivers wine shall be

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

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

20 (4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any
21 other licensing fees paid by a winery or retailer holding a license, except for the amount of the
22 license fee and the restriction to sales of winery or farm winery wines, a winery or farm winery
23 acting as a wine specialty shop retailer is subject to all other provisions of this article which are
24 applicable to a wine specialty shop retailer as defined in section two of this article;

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

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

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

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

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

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

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

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

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

49 (d) No retailer may be licensed as a private club as provided by article seven of this
50 chapter, except as provided by subsection (k) of this section.

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

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

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

69 (h) The commissioner may issue a special license for the retail sale of wine at any festival
70 or fair which is endorsed or sponsored by the governing body of a municipality or a county
71 commission. Such special license shall be issued for a term of no longer than 10 consecutive
72 days and the fee therefor shall be \$250 regardless of the term of the license unless the applicant
73 is the manufacturer of said wine on a winery or a farm winery as defined in §60-1-5a of this code,
74 in which event the fee shall be \$50 if the event is held on the premises of the winery or farm
75 winery. The application for the license shall contain information as the commissioner may
76 reasonably require and shall be submitted to the commissioner at least 30 days prior to the first
77 day when wine is to be sold at the festival or fair. A winery or a farm winery licensed under this
78 subsection may exhibit, conduct tastings or sell samples, ~~not to exceed a reasonable serving of~~
79 ~~three ounces~~ in any increment up to eight ounces per serving, and may sell wine samples for
80 consumption on the premises during the operation of a festival or fair: *Provided*, That for licensed
81 wineries or farm wineries at a licensed festival or fair the tastings, samples and off-premises sales
82 shall occur under the hours of operation as required in this article, except that on Sunday tastings,
83 samples and off-premises sales are unlawful between the hours of 2:00 a.m. and 10:00 a.m. A
84 special license issued other than to a winery or a farm winery may be issued to a "wine club" as
85 defined herein below. The festival or fair committee or the governing body shall designate a
86 person to organize a club under a name which includes the name of the festival or fair and the
87 words "wine club". The license shall be issued in the name of the wine club. A licensee may not
88 commence the sale of wine as provided in this subsection until the wine club has at least 50 dues-
89 paying members who have been enrolled and to whom membership cards have been issued.
90 Thereafter, new members may be enrolled and issued membership cards at any time during the
91 period for which the license is issued. A wine club licensed under the provisions of this subsection
92 may sell wine only to its members, and in portions not to exceed eight ounces per serving. The
93 sales shall take place on premises or in an area cordoned or segregated so as to be closed to
94 the general public, and the general public shall not be admitted to the premises or area. A wine

95 club licensee under the provisions of this subsection shall be authorized to serve complimentary
96 samples of wine in ~~moderate quantities~~ for tasting.

97 A license issued under the provisions of this subsection and the licensee holding the
98 license shall be subject to all other provisions of this article and the rules and orders of the
99 commissioner relating to the special license: *Provided*, That the commissioner may by rule,
100 regulation or order provide for certain waivers or exceptions with respect to the provisions, rules,
101 regulations or orders as the circumstances of each festival or fair may require, including, without
102 limitation, the right to revoke or suspend any license issued pursuant to this section prior to any
103 notice or hearing notwithstanding the provisions of §60-8-27 and §60-8-28 of this code: *Provided*,
104 *however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this
105 code be waived nor shall any exception be granted with respect thereto.

106 A license issued under the provisions of this subsection and the licensee holding the
107 license is not subject to the provisions of subsection (g) of this section.

108 (i) (A) The commissioner may issue a special license for the retail sale of wine in a
109 professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles
110 the licensee to sell and serve wine, for consumption in a professional baseball stadium. For the
111 purpose of this subsection, "professional baseball stadium" means a facility constructed primarily
112 for the use of a major or minor league baseball franchisee affiliated with the National Association
113 of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league
114 baseball park. Any special license issued pursuant to this subsection shall be for a term beginning
115 on the date of issuance and ending on the next following June 30, and its fee is \$250 regardless
116 of the length of the term of the license. The application for the special license shall contain
117 information as the commissioner may reasonably require and must be submitted to the
118 commissioner at least 30 days prior to the first day when wine is to be sold at the professional
119 baseball stadium. The special license may be issued in the name of the baseball franchisee or
120 the name of the primary food and beverage vendor under contract with the baseball franchisee.

121 These sales must take place within the confines of the professional baseball stadium, provided
122 that the exterior of the area where wine sales may occur are surrounded by a fence or other
123 barrier prohibiting entry except upon the franchisee's express permission, and under the
124 conditions and restrictions established by the franchisee, so that the wine sales area is closed to
125 free and unrestricted entry by the general public.

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

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

136 (j) A license to sell wine granted to a private wine bed and breakfast, private wine
137 restaurant, private wine spa or a private club under the provisions of this article entitles the
138 operator to sell and serve wine, for consumption on the premises of the licensee, when the sale
139 accompanies the serving of food or a meal to its members and their guests in accordance with
140 the provisions of this article: *Provided*, That a licensed private wine bed and breakfast, private
141 wine restaurant, private wine spa or a private club may permit a person over 21 years of age to
142 purchase wine, consume wine and recork or reseal, using a tamper resistant cork or seal, up to
143 two separate bottles of unconsumed wine in conjunction with serving of food or a meal to its
144 members and their guests in accordance with the provisions of this article and in accordance with
145 regulations promulgated by the commissioner for the purpose of consumption of said wine off
146 premises: *Provided, however*, That for this article, food or a meal provided by the private licensee

147 means that the total food purchase, excluding beverage purchases, taxes, gratuity or other fees
148 is at least \$15: *Provided, however,* That a licensed private wine restaurant or a private club may
149 offer for sale for consumption off the premises, sealed bottles of wine to its customers provided
150 that no more than one bottle is sold per each person over 21 years of age, as verified by the
151 private wine restaurant or private club, for consumption off the premises. Such licensees are
152 authorized to keep and maintain on their premises a supply of wine in quantities as may be
153 appropriate for the conduct of operations thereof. Any sale of wine so made shall be subject to all
154 restrictions set forth in §60-8-20 of this code. A private wine restaurant may also be licensed as
155 a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code.

156 (k) With respect to subsections (h), (i), (j), (o) and (p) of this section, the commissioner
157 shall promulgate legislative rules in accordance with the provisions of chapter 29A of this code
158 with regard to the form of the applications, the suitability of both the applicant and location of the
159 licensed premises and other legislative rules deemed necessary to carry the provisions of the
160 subsections into effect.

161 (l) The commissioner shall promulgate legislative rules in accordance with the provisions
162 of chapter 29A of this code to allow restaurants to serve wine with meals, and to sell wine by the
163 bottle for off-premises consumption as provided in subsection (j) of this section. Each restaurant
164 so licensed shall be charged an additional \$100 per year fee:

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

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

169 (o) A wine specialty shop under this article may also hold a wine sampling license
170 authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine
171 specialty shop location during regular hours of business. The wine specialty shop may serve up
172 to three complimentary samples of wine, consisting of no more than one ounce each, to any one

173 consumer in one day. Persons serving the complimentary samples must be 21 years of age and
174 an authorized representative of the licensed wine specialty shop, winery, farm winery or a
175 representative of a distributor or registered supplier. Distributor and supplier representatives
176 attending wine sampling events must be registered with the commissioner. No licensee, employee
177 or representative may furnish, give or serve complimentary samples of wine to any person less
178 than 21 years of age or to a person who is physically incapacitated due to the consumption of
179 alcoholic liquor or the use of drugs. The wine specialty shop shall notify and secure permission
180 from the commissioner for all wine sampling events one month prior to the event. Wine sampling
181 events may not exceed six hours per calendar day. Licensees must purchase all wines used
182 during these events from a licensed farm winery or a licensed distributor.

183 (p) The commissioner may issue special one-day licenses to duly organized, nonprofit
184 corporations and associations allowing the sale and serving of wine when raising money for
185 athletic, charitable, educational or religious purposes. The license application shall contain
186 information as the commissioner may reasonably require and shall be submitted to the
187 commissioner at least 30 days prior to the event. Wines used during these events may be donated
188 by or purchased from a licensed retailer, a distributor or a farm winery. Under no circumstances
189 may the provision of §60-8-20(c) of this code be waived nor may any exception be granted with
190 respect thereto.

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

199 (r)(1) The commissioner may issue a special license for the retail sale of wine in a college
200 stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and
201 serve wine for consumption in a college stadium. For the purpose of this subsection, "college
202 stadium" means a facility constructed primarily for the use of a Division I college that is a member
203 of the National Collegiate Athletic Association, or its successor, and used as a football, basketball,
204 baseball, soccer or other Division I sports stadium. A special license issued pursuant to this
205 subsection shall be for a term beginning on the date of its issuance and ending on the next
206 following June 30, and its fee is \$250 regardless of the length of the term of the license. The
207 application for the special license shall contain information as the commissioner may reasonably
208 require and must be submitted to the commissioner at least 30 days prior to the first day when
209 wine is to be sold. The special license may be issued in the name of the National Collegiate
210 Athletic Association Division I college or university or the name of the primary food and beverage
211 vendor under contract with that college or university. These sales must take place within the
212 confines of the college stadium: *Provided*, That the exterior of the area where wine sales may
213 occur are surrounded by a fence or other barrier prohibiting entry except upon the college or
214 university's express permission, and under the conditions and restrictions established by the
215 college or university, so that the wine sales area is closed to free and unrestricted entry by the
216 general public.

217 (2) A license issued under this subsection and the licensee are subject to the other
218 requirements of this article and the rules and orders of the commissioner relating to the special
219 license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions
220 to those rules or orders as the circumstances of each the college stadium may require, including,
221 without limitation, the right to revoke or suspend any license issued pursuant to this section prior
222 to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided, however*,
223 That under no circumstances may §60-8-20(c) or §60-8-20(d) of this code be waived nor shall
224 any exception be granted concerning those subsections.

225 (3) The commissioner may propose rules for legislative approval in accordance with §29A-
226 3-1 *et seq.* of this code to implement this subsection.

§60-8-4a. Liter tax for hard cider; fund; reports to Tax Commissioner.

1 (a) For purposes of this section, "hard cider" means a wine derived primarily from apples
2 or pears, which contains not more than 50 percent fruit product or fruit flavoring other than apple
3 or pear, and which contains between one-half of one percent and eight and five tenths percent
4 alcohol by volume.

5 (b) Hard cider, as defined in this section, shall have a tax levied and imposed on all hard
6 cider sold in West Virginia after July 1, 2019, by suppliers to distributors, a tax of 22 and six
7 hundredths cents per gallon: *Provided*, That producers eligible for federal tax credits in 26 U.S.C.
8 5041(c)(1) shall be eligible for such credits in this state.

9 (c) All taxes for hard cider collected pursuant to this section shall be deposited in a fund
10 called the Hard Cider Excise Tax Fund. The Alcohol Beverage Control Commissioner shall
11 request the State Treasurer to create said fund, which the Treasurer may not deny such request.
12 The Treasurer shall transfer all amounts in the fund at the end of each fiscal year to the state's
13 General Revenue Fund.

14 (d) Before the 16th day of each month thereafter, every supplier, distributor and direct
15 shipper shall make a written report under oath to the Tax Commissioner and the Commissioner
16 of Alcohol and Beverage Control showing the identity of the purchaser, the quantity, label and
17 alcoholic content of wine sold by the supplier to West Virginia distributors or the direct shipper to
18 West Virginia adult residents during the preceding month and at the same time shall pay the tax
19 imposed by this article on the wine sold to the distributor or the West Virginia adult residents
20 during the preceding month to the Tax Commissioner.

21 The reports shall contain other information and be in the form the Tax Commissioner may
22 require. For purposes of this article, the reports required by this section shall be considered tax
23 returns covered by the provisions of §11-10-1 *et seq.* of this code. Failure to timely file the tax

- 24 returns within five calendar days of the 16th day of each month will also subject a supplier,
25 distributor and direct shipper to penalties under §60-4-18 of this code.
- 26 No hard cider imported, sold or distributed in this state or sold and shipped to this state by
27 a direct shipper shall be subject to more than one liter tax.

NOTE: The purpose of this bill is to expand the ability of hard cider manufactures to produce hard cider in this state; establish a new tax classification for hard cider as a type of wine manufactured in this state; permit federal tax credits to apply to the state tax for those producers who qualify; create a fund for tax deposits; require reports to the Tax Commissioner; and permit a wine manufacturer to serve full pours of wine at festivals for which it is properly licensed.

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