

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4159

BY DELEGATES CRISS, ESPINOSA, ELLINGTON, BARRETT,

BATES, GRAVES, SPONAUGLE, WILLIAMS, LINVILLE,

COWLES AND HARDY

[Introduced January 14, 2020; Referred to the
Committee on Government Organization then the
Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto two new
2 sections designated §19-2-12, and §19-2-13; to amend and reenact §60-1-5a of said
3 code; to amend and reenact §60-8-2, §60-8-3, and §60-8-4 of said code; and to add a
4 new article to said code designated §60-8A-1, §60-8A-2, §60-8A-3, §60-8A-4, §60-8A-5,
5 §60-8A-6, and §60-8A-7; all relating to the manufacture and sale of hard cider;
6 establishing the Agriculture Development Fund; establishing permitted expenditures from
7 the fund; creating a new program to develop hard cider; providing for definitions; providing
8 that there is no separate license required to manufacture and sell hard cider under certain
9 conditions; providing for a hard cider distributor's license; providing for hard cider
10 exemptions to the wine liter tax; establishing a hard cider gallon tax; providing for
11 applicability of other laws; requiring regular reports to the Tax Commissioner; providing
12 for applications to import products necessary to manufacture hard cider under certain
13 conditions; providing for hard cider sales for consumption; providing for complementary
14 samples to be given; establishing requirements for complementary samples; permitting
15 the sale of growlers; establishing growler labeling requirements; establishing growler
16 sanitation requirements; providing for fees for the privilege to sell growlers; and providing
17 for rule-making authority.

Be it enacted by the Legislature of West Virginia:

CHAPTER 19. AGRICULTURE.

ARTICLE 2. MARKETING AGRICULTURAL PRODUCTS.

§19-2-12. Agriculture Development Fund; administration; purpose; funding.

1 (a) There is hereby created in the State Treasury a special revenue account to be known
2 as the Agriculture Development Fund. The fund shall be administered by the Department of
3 Agriculture. The fund shall consist of all moneys deposited into the fund pursuant to §60-8A-3 of
4 this code; any moneys that may be designated for deposit in this fund by an act of the Legislature;

5 any moneys appropriated and designated for the fund by the Legislature; any moneys able to be
6 transferred into the fund by authority of the commissioner from other funds; and gifts, donations,
7 and interest or other returns earned from investment of the fund.

8 (b) Expenditures from the fund shall be for the purpose of fostering and supporting the
9 development of agricultural sectors, such as hard cider, within the state, and are not authorized
10 from collections, but are to be made only in accordance with appropriation by the Legislature and
11 in accordance with the provisions of §12-3-1 et seq. of this code and upon the fulfillment of the
12 provisions set forth in §11B-2-1 et seq. of this code. Any balance, including accrued interest and
13 other returns, remaining in the fund at the end of each fiscal year shall not revert to the General
14 Revenue Fund, but shall remain in the fund and be expended as provided by this section.

§19-2-13. Hard cider development program; purpose; funding.

1 The commissioner shall establish a program to foster the development and growth of the
2 hard cider industry in the state. The purpose of the program shall be to assist in the development
3 of fruit inputs necessary for the production of hard cider in the state. The program shall be funded
4 using moneys deposited within the Agriculture Development Fund created pursuant to §19-2-12
5 of this code.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

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 such 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 must not exceed an alcoholic content of 22 percent
9 alcohol by volume and shall be matured in wooden barrels or casks.

10 (b) Notwithstanding the provisions of subsection (a) of this section, a farm winery may
11 include one off-farm location. The owner of a farm winery may provide to the commissioner
12 evidence, accompanied by written findings by the West Virginia Agriculture Commissioner in
13 support thereof, that the owner has planted on the premises of the farm winery young nonbearing
14 fruit plants. The commissioner may grant permission for one off-farm location in an amount equal
15 to that reasonably expected to be produced when the nonbearing fruit plants planted on the farm
16 winery come into full production. The length of time of the permission to use an off-farm location
17 shall be determined by the commissioner after consultation with the Agriculture Commissioner.

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
15 liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful
16 acts or violations of this article, notwithstanding the liability of trustees in §44-10-1 *et seq.* of this
17 code.

18 “Fortified wine” means any wine to which brandy or other alcohol has been added and
19 shall include dessert wines which are not fortified having an alcohol content by volume of at least
20 fourteen and one-tenths percent and not exceeding 16 percent.

21 “Grocery store” means any retail establishment, commonly known as a grocery store,
22 supermarket, delicatessen, caterer or party supply store, where food, food products and supplies
23 for the table are sold for consumption off the premises with average monthly sales (exclusive of
24 sales of wine) of not less than \$500 and an average monthly inventory (exclusive of inventory of
25 wine) of not less than \$3,000. The term “grocery store” shall also include and mean a separate
26 and segregated portion of any other retail store which is dedicated solely to the sale of food, food
27 products and supplies for the table for consumption off the premises with average monthly sales
28 with respect to such separate or segregated portion (exclusive of sales of wine) of not less than
29 \$3,000 and an average monthly inventory (exclusive of inventory of wine) of not less than \$3,000.

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

36 “Hard Cider Distributor” means any person whose principal place of business is within the
37 State of West Virginia who makes purchases from a supplier to sell or distribute hard cider, but
38 not other types of wine, to retailers, grocery stores, private wine bed and breakfasts, private wine
39 restaurants, private wine spas, private clubs or wine specialty shops under authority of this code

40 and maintains a warehouse in this state for the distribution of hard cider, but not other types of
41 wine. For the purpose of a hard cider distributor, the term “person” means and includes an
42 individual, firm, trust, partnership, limited partnership, limited liability company, association or
43 corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor
44 licensee, and the trustee or other persons in active control of the activities of the trust relating to
45 the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor
46 license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in
47 §44-10-1 et seq. of this code.

48 “Licensee” means the holder of a license granted under the provisions of this article.

49 “Person” means and includes an individual, firm, partnership, limited partnership, limited
50 liability company, association or corporation.

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

61 “Private wine restaurant” means a restaurant which: (1) Is a partnership, limited
62 partnership, corporation, unincorporated association or other business entity which has as its
63 principal purpose the business of serving meals on its premises to its members and their guests;
64 (2) is licensed under the provisions of this article as to all of its premises or as to a separate
65 segregated portion of its premises to serve wine to its members and their guests when such sale

66 accompanies the serving of food or meals; (3) admits only duly elected and approved dues-paying
67 members and their guests while in the company of a member and does not admit the general
68 public. Such private clubs that meet the private wine restaurant requirements numbered (1), (2)
69 and (3) in this definition shall be considered private wine restaurants.

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

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

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

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

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

89 "Varietal wine" means any wine labeled according to the grape variety from which such
90 wine is made.

91 "Vintage wine" or "vintage-dated wine" means wines from which the grapes used to
92 produce such wine are harvested during a particular year or wines produced from the grapes of
93 a particular harvest in a particular region of production.

94 "Wine" means any alcoholic beverage obtained by the natural fermentation of the natural
95 content of grapes, other fruits or honey or other agricultural products containing sugar and to
96 which no alcohol has been added and shall include table wine and hard cider, and shall exclude
97 fortified wine and shall also exclude any product defined as or embraced within the definition of
98 nonintoxicating beer under the provisions of §11-16-1 *et seq.* of this code.

99 "Wine specialty shop" means a retailer who shall deal principally in the sale of table wine,
100 nonfortified dessert wines, wine accessories and food or foodstuffs normally associated with wine
101 and: (1) Who shall maintain a representative number of such wines for sale in his or her inventory
102 which are designated by label as varietal wine, vintage, generic and/or according to region of
103 production and the inventory shall contain not less than 15 percent vintage or vintage-dated wine
104 by actual bottle count; and (2) who, any other provisions of this code to the contrary
105 notwithstanding, may maintain an inventory of port, sherry and Madeira wines having an alcoholic
106 content of not more than 22 percent alcohol by volume and which have been matured in wooden
107 barrels or casks.

§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. Any person who is licensed to engage in any
12 business concerning the manufacture, sale, or distribution of wine may also engage in the
13 manufacture, sale, or distribution of hard cider without obtaining a separate hard cider license.

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

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

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

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

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

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

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

32 (7) Two hundred fifty dollars per year for a private wine restaurant license. Each separate
33 restaurant from which a licensee sells wine shall be separately licensed and there shall be

34 collected with respect to each location the annual license fee of \$250 as provided in this
35 subdivision;

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

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

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

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

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

49 (13) Two hundred fifty dollars per year for a hard cider distributor's license and each
50 separate warehouse or other facility from which a distributor sells, transfers, or delivers hard cider
51 shall be separately licensed and there shall be collected with respect to each location the annual
52 license fee of \$250 as provided in this subdivision.

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

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

58 (e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as
59 provided by §11-16-1 *et seq.* of this code: *Provided*, That a delicatessen, a caterer, or party supply

60 store which is a grocery store as defined in §60-8-2 of this code and which is licensed as a Class
61 A retail dealer in nonintoxicating beer may be a retailer under this article: *Provided, however,* That
62 any delicatessen, caterer, or party supply store licensed in both capacities must maintain average
63 monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average
64 monthly sales of nonintoxicating beer.

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

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

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

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

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

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

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

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

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

137 occur must be surrounded by a fence or other barrier prohibiting entry except upon the
138 franchisee's express permission, and under the conditions and restrictions established by the
139 franchisee, so that the wine sales area is closed to free and unrestricted entry by the general
140 public.

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

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

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

163 least \$15: *Provided further*, That a licensed private wine restaurant or a private club may offer for
164 sale, for consumption off the premises, sealed bottles of wine to its customers provided that no
165 more than one bottle is sold per each person over 21 years of age, as verified by the private wine
166 restaurant or private club, for consumption off the premises. Such licensees are authorized to
167 keep and maintain on their premises a supply of wine in quantities appropriate for the conduct of
168 operations thereof. Any sale of wine is subject to all restrictions set forth in §60-8-20 of this code.
169 A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer
170 as provided by §11-16-1 *et seq.* of this code.

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

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

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

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

183 (o) A wine specialty shop under this article may also hold a wine sampling license
184 authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine
185 specialty shop location during regular hours of business. The wine specialty shop may serve up
186 to three complimentary samples of wine, consisting of no more than two fluid ounces each, to any
187 one consumer in one day. Persons serving the complimentary samples must be 21 years of age
188 and an authorized representative of the licensed wine specialty shop, winery, farm winery, or a

189 representative of a distributor or registered supplier. Distributor and supplier representatives
190 attending wine sampling events must be registered with the commissioner. No licensee,
191 employee, or representative may furnish, give, sell, or serve complimentary samples of wine to
192 any person less than 21 years of age or to a person who is physically incapacitated due to the
193 consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and
194 secure permission from the commissioner for all wine sampling events one month prior to the
195 event. Wine sampling events may not exceed six hours per calendar day. Licensees must
196 purchase all wines used during these events from a licensed farm winery or a licensed distributor.

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

215 or farm winery at a licensed one-day event, the tastings, samples and off-premises sales shall
216 occur under the hours of operation as required in this article, except on Sunday, tastings, samples,
217 and off-premises sales are unlawful between the hours of 2:00 a.m. and 10:00 a.m., from the one-
218 day licensee's submitted floor plan for the event subject to the requirements in the code and rules.
219 Under no circumstances may the provisions of §60-8-20(c) or §60-8-20(f) of this code be waived
220 nor may any exception be granted with respect to those subsections. No more than six licenses
221 may be issued to any single licensee during any calendar year.

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

230 (r)(1) The commissioner may issue a special license for the retail sale of wine in a college
231 stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and
232 serve wine for consumption in a college stadium. For the purpose of this subsection, "college
233 stadium" means a facility constructed primarily for the use of a Division I, II, or III college that is a
234 member of the National Collegiate Athletic Association, or its successor, and used as a football,
235 basketball, baseball, soccer, or other Division I, II, or III sports stadium. A special license issued
236 pursuant to this subsection shall be for a term beginning on the date of its issuance and ending
237 on the next following June 30, and its fee is \$250 regardless of the length of the term of the
238 license. The application for the special license shall contain information required by the
239 commissioner and must be submitted to the commissioner at least 30 days prior to the first day
240 when wine is to be sold. The special license may be issued in the name of the National Collegiate

241 Athletic Association Division I, II, or III college or university or the name of the primary food and
242 beverage vendor under contract with that college or university. These sales must take place within
243 the confines of the college stadium: *Provided*, That the exterior of the area where wine sales may
244 occur must be surrounded by a fence or other barrier prohibiting entry except upon the college or
245 university's express permission, and under the conditions and restrictions established by the
246 college or university, so that the wine sales area is closed to free and unrestricted entry by the
247 general public.

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

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

§60-8-4. Liter tax.

1 There is hereby levied and imposed on all wine sold after July 1, 2007, by suppliers to
2 distributors, and including all wine sold and sent to West Virginia adult residents from direct
3 shippers, except wine sold to the commissioner, a tax of twenty-six and four hundred six-
4 thousandths cents per liter. Effective July 1, 2020, hard cider is excepted from this per liter tax
5 and is taxed pursuant to §60-8A-3 of this code.

6 Before the 16th day of each month thereafter, every supplier, distributor and direct shipper
7 shall make a written report under oath to the Tax Commissioner and the commissioner showing
8 the identity of the purchaser, the quantity, label and alcoholic content of wine sold by the supplier

9 to West Virginia distributors or the direct shipper to West Virginia adult residents during the
10 preceding month and at the same time shall pay the tax imposed by this article on the wine sold
11 to the distributor or the West Virginia adult residents during the preceding month to the Tax
12 Commissioner.

13 The reports shall contain other information and be in the form the Tax Commissioner may
14 require. For purposes of this article, the reports required by this section shall be considered tax
15 returns covered by the provisions of §11-10-1 *et seq.* of this code. Failure to timely file the tax
16 returns within five calendar days of the 16th day of each month will also subject a supplier,
17 distributor and direct shipper to penalties under §60-8-18 of this code.

18 No wine imported, sold or distributed in this state or sold and shipped to this state by a
19 direct shipper shall be subject to more than one liter tax.

ARTICLE 8A. MANUFACTURE AND SALE OF HARD CIDER.

§60-8A-1. Definition of Hard Cider.

1 “Hard Cider” means a type of wine that is derived primarily from the fermentation of apples,
2 pears, peaches, honey, or other fruit, or from apple, pear, peach or other fruit juice concentrate
3 and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at
4 least one half of one percent and less than 12 and one half percent alcohol by volume; and is
5 advertised, labelled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as
6 wine, wine product, or as a substitute for wine.

§60-8A-2. Applicability of other laws and licenses.

1 (a) Except as stated in this article, all wine licenses and other wine requirements set forth
2 in §60-8-1 *et seq.*, §60-4-3b, and §60-6-2, of this code, shall apply to the manufacture, distribution,
3 or sale of hard cider. Any person or licensee legally authorized to manufacture, distribute, or sell
4 wine may manufacture, distribute, or sell hard cider in the same manner and to the same persons,
5 and subject to the same limitations and conditions, as such license or legal right authorizes him

6 or her to manufacture, distribute, or sell wine. No additional wine license fees shall be charged
7 for the privilege of manufacturing, distributing, or selling hard cider.

8 (b) Except as stated in this article, all hard cider distributors are bound by all wine
9 requirements set forth in §60-8-1 et seq., §60-4-3b, and §60-6-2, of this code which shall apply to
10 distribution of hard cider. Any person or licensee legally authorized to distribute hard cider may
11 distribute hard cider in the same manner and to the same persons, and subject to the same
12 limitations and conditions, as a license or legal right would authorize him or her to distribute wine.
13 No additional hard cider license fees shall be charged for the privilege of distributing hard cider.

§60-8A-3. Taxation; reporting; deposits into Agriculture Development Fund; penalties for failure to file returns.

1 (a) There is hereby levied and imposed on all hard cider sold on and after July 1, 2020,
2 by wineries, farm wineries, and suppliers to distributors, and including all hard cider sold and sent
3 to West Virginia adult residents from direct shippers, a tax of 22 and six-tenths cents per gallon,
4 in like ratio for any partial gallon or other unit of measure: *Provided*, That wineries, farm wineries,
5 and suppliers eligible for federal tax credits in 26 U.S.C. 5041(c)(1) shall be eligible for such
6 credits in this state. Hard cider is exempt from the liter tax established under §60-8-4 of this code.

7 (b) All taxes for hard cider collected pursuant to this section shall be deposited in the
8 Agriculture Development Fund established by §19-2-12 of this code.

9 (c) Before the 16th day of each month thereafter, every winery, farm winery, and supplier,
10 distributor and direct shipper shall make a written report under oath to the Tax Commissioner and
11 the commissioner showing the identity of the purchaser, the quantity, label and alcoholic content
12 of hard cider sold by the winery, farm winery, and supplier to West Virginia distributors or the
13 direct shipper to West Virginia adult residents during the preceding month and at the same time
14 shall pay the tax imposed by this article on the hard cider sold to the distributor or the West Virginia
15 adult residents during the preceding month to the Tax Commissioner.

16 The reports shall contain other information and be in the form the Tax Commissioner may
17 require. For purposes of this article, the reports required by this section shall be considered tax
18 returns covered by the provisions of §11-10-1 et seq. of this code. Failure to timely file the tax
19 returns within five calendar days of the 16th day of each month will also subject a winery, farm
20 winery, supplier, distributor and direct shipper to penalties under §60-8-18 of this code.

21 (d) No hard cider imported, sold or distributed in this state or sold and shipped to this state
22 by a direct shipper shall be subject to more than one per-gallon tax on hard cider.

§60-8A-4. Fruit sources; phase in; applications.

1 (a) On and after July 1, 2020, pursuant to §60-3-25 of this code, any farm winery
2 attempting to manufacture hard cider may submit an application to the Agriculture Commissioner
3 with a copy to the commissioner showing its inability to obtain from within this state 75 percent of
4 the apples, pears, peaches, honey, or other fruits necessary to produce its hard cider. The
5 Agriculture Commissioner may issue to the applicant a permit to import such fruit, honey, or fruit
6 juice concentrate in an amount deemed necessary by the Agriculture Commissioner to allow such
7 farm winery to produce hard cider within the percentage established by §60-1-5a of this code.

8 (b) The burden of proof shall be upon the applicant to show that apples, pears, peaches,
9 honey, or other fruits, of the type normally used by the licensee are not available from any other
10 source within the State of West Virginia, and no application for a permit under this section shall
11 be considered by the commissioner unless it is accompanied by written findings by the Agriculture
12 Commissioner in support thereof.

13 (c) Notwithstanding any provision in §60-3-25 of this code to the contrary, any permit
14 issued under this section shall be effective for a period of up to five years: *Provided*, That the
15 applicant files an annual statement of necessity, supported by written findings from the Agriculture
16 Commissioner, with the commissioner. After the five-year permit issued pursuant to this section
17 has expired, any subsequent application for a permit shall be submitted pursuant to §60-3-25 of
18 this code.

§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 kegs, bottles, cans, or growlers for personal consumption and not for resale. A
6 licensed winery or farm winery may not sell, give or furnish hard cider for consumption on the
7 premises of the principal place of business or manufacturing facility located in the State of West
8 Virginia, except for the limited purpose of complimentary samples as permitted in subsection (b)
9 of this section. “Growler” means a container or jug that is made of glass, ceramic, metal, or other
10 approved material, that may be no larger than 128 fluid ounces in size and must be capable of
11 being securely sealed as approved by the commissioner.

12 (b) Complimentary samples. — A licensed winery or farm winery with its principal place of
13 business or manufacturing facility located in the State of West Virginia may offer only
14 complimentary samples of hard cider manufactured at the winery’s or farm winery’s principal place
15 of business or manufacturing facility located in the State of West Virginia. The complimentary
16 samples may be no greater than two fluid ounces per sample per patron, and a sampling shall
17 not exceed six complimentary two-fluid ounce samples per patron per day. A licensed winery or
18 farm winery providing complimentary samples shall provide complimentary food items to the
19 patron consuming the complimentary samples; and prior to any sampling, verify, using proper
20 identification, that the patron sampling is 21 years of age or over and that the patron is not visibly
21 intoxicated.

22 (c) Retail sales. — Every licensed winery or farm winery under this section shall comply
23 with all the provisions as applicable to wine retailers when conducting sales of hard cider and
24 shall be subject to all applicable requirements and penalties.

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

29 (e) Advertising. — A licensed winery or farm winery may advertise a particular brand or
30 brands of hard cider produced by the licensed winery or farm winery and the price of the hard
31 cider subject to state and federal requirements or restrictions. The advertisement may not
32 encourage intemperance.

33 (f) Growler requirements. — A licensed winery or farm winery, if offering growler filling
34 services, must fill a growler and patrons are not permitted to access the secure area or fill a
35 growler. If offered, a licensed winery or farm winery must sanitize, fill, securely seal, and label any
36 growler prior to its sale. A licensed winery or farm winery under this section may only offer for
37 retail sale growlers no larger than 128 fluid ounces of hard cider manufactured by the licensed
38 winery or farm winery for personal consumption off of the licensed premises and not for resale. A
39 licensed winery or farm winery under this section may refill a growler subject to the requirements
40 of this section. A licensed winery or farm winery shall visually inspect any growler before filling or
41 refilling it. A licensed winery or farm winery may not fill or refill any growler that appears to be
42 cracked, broken, unsafe or otherwise unfit to serve as a sealed beverage container.

43 (g) Growler labeling. — A licensed winery or farm winery under this section selling growlers
44 shall affix a conspicuous label on all sold and securely sealed growlers listing the name of the
45 licensee selling the growler, the brand of the hard cider in the growler, the alcohol content by
46 volume of the hard cider in the growler and the date the growler was filled or refilled, and, further,
47 all labeling on the growler shall be consistent with all federal labeling and warning requirements.

48 (h) Growler sanitation. — A licensed winery or farm winery authorized under this section
49 shall clean and sanitize all growlers he or she fills or refills in accordance with all state and county
50 health requirements prior to its sealing. In addition, the licensed winery or farm winery shall

51 sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines,
52 barrel tubes and any other related equipment used to fill or refill growlers. Failure to comply with
53 this subsection may result in penalties.

54 (i) Fee. — There is no additional fee for a licensed winery or farm winery authorized under
55 this section to sell growlers.

56 (j) Limitations on licensees. — To be authorized under this section, a licensed winery or
57 farm winery may not produce more than 25,000 barrels per calendar year at the winery's or farm
58 winery's principal place of business or manufacturing facility located in the State of West Virginia.
59 A licensed winery or farm winery under this section may only conduct tours, give complimentary
60 samples and sell growlers during the hours of operation defined for retailers. A licensed winery or
61 farm winery authorized under this section shall be subject to applicable penalties.

62 (k) Rules. — The West Virginia Alcoholic Beverage Control Commissioner, in consultation
63 with the Bureau for Public Health concerning sanitation, is authorized to propose rules for
64 legislative approval, pursuant to §29A-3-1 et seq. of this code, to implement this section.

**§60-8A-6. Wine licensee's authority to sell growlers; complementary samples;
requirements; advertisements; taxation; and fees.**

1 (a) Sales of hard cider. — A wine retailer, private wine restaurant, private club, or wine
2 specialty shop, who pays the fee in subsection (h) of this section may offer only hard cider for
3 retail sale to patrons from their licensed premises in a sealed growler for personal consumption
4 off the licensed premises and not for resale. Prior to the sale, the licensee shall verify, using
5 proper identification, that any patron purchasing hard cider is 21 years of age or over and that the
6 patron is not visibly intoxicated. A licensee authorized under this section may not sell, give, or
7 furnish other alcoholic liquors, including other types of wine, unless it is a private club licensed to
8 sell sealed wine for consumption off of the licensed premises and meets the requirements set out
9 in §60-8-3(j) and §60-8-3(l) of this code, for the sale of wine, not liquor. "Growler" means a
10 container or jug that is made of glass, ceramic, metal, or other approved material, that may be no

11 larger than 128 fluid ounces in size and must be capable of being securely sealed as approved
12 by the commissioner.

13 (b) Retail sales. — Every licensee authorized under this section shall comply with all
14 provisions applicable to retailers when conducting sales of hard cider and shall be subject to all
15 applicable requirements and penalties.

16 (c) Payment of taxes and fees. — A licensee authorized under this section shall pay all
17 taxes and fees required of retailers, in addition to any other taxes and fees required, and meet
18 applicable licensing provisions as required by law and by rule of the commissioner.

19 (d) Advertising. — A licensee authorized under this section may advertise a particular
20 brand or brands of hard cider and the price of the hard cider subject to state and federal
21 requirements or restrictions. The advertisement may not encourage intemperance.

22 (e) Growler requirements. — A licensee authorized under this section must fill a growler
23 and patrons are not permitted to access the secure area or fill a growler. The licensee must
24 sanitize, fill, securely seal, and label any growler prior to its sale. The licensee may only offer for
25 retail sale growlers no larger than 128 fluid ounces of hard cider for personal consumption off the
26 licensed premises and not for resale. The licensee may refill a growler subject to the requirements
27 of this section. The licensee shall visually inspect any growler before filling or refilling it. A licensee
28 may not fill or refill any growler that appears to be cracked, broken, unsafe, or otherwise unfit to
29 serve as a sealed beverage container.

30 (f) Growler labeling. — A licensee authorized under this section selling growlers shall affix
31 a conspicuous label on all sold and securely sealed growlers listing the name of the licensee
32 selling the growler, the brand of the hard cider in the growler, the alcohol content by volume of
33 the hard cider in the growler, and the date the growler was filled or refilled, and, further, all labeling
34 on the growler shall be consistent with all federal labeling and warning requirements.

35 (g) Growler sanitation. — A licensee authorized under this section shall clean and sanitize
36 all growlers he or she fills or refills in accordance with all state and county health requirements

37 prior to its sealing. In addition, the licensee shall sanitize, in accordance with all state and county
38 health requirements, all taps, tap lines, pipe lines, barrel tubes, and any other related equipment
39 used to fill or refill growlers. Failure to comply with this subsection may result in penalties including
40 under §60-8-18 of this code.

41 (h) Fees. — Commencing July 1, 2020, and every July 1 thereafter, there is an annual
42 \$100 nonrefundable fee for a licensee to sell hard cider growlers as provided by this section. The
43 licensee must be in good standing with the state at the time of paying the fee.

44 (i) Complimentary samples. — A licensee authorized under this section may provide hard
45 cider complimentary samples which may be no greater than two fluid ounces per sample and a
46 sampling shall not exceed six different two-fluid ounce samples per patron per day. A licensee
47 authorized under this section providing complimentary samples shall, prior to any sampling, verify,
48 using proper identification, that the patron sampling is 21 years of age or over and that the patron
49 is not visibly intoxicated. Hard cider utilized for sampling purposes must be purchased from the
50 licensee's inventory.

51 (j) Limitations on licensees. — A licensee under this section may only sell growlers during
52 the hours of operation set forth in §60-8-34 of this code. Any licensee authorized under this section
53 must maintain a secure area for the sale of hard cider in a growler. The secure area must only be
54 accessible by the licensee. Any licensee authorized under this section shall be subject to the
55 applicable penalties under the code.

56 (k) Nonapplicability of certain statutes. — Notwithstanding any other provision of this code
57 to the contrary, licensees under this section are permitted to break the seal of the original
58 container for the limited purpose of filling a growler or providing complimentary samples as
59 provided in this section. Any unauthorized sale of hard cider or any consumption not permitted on
60 the licensee's premises is subject to applicable penalties under this code.

61 (l) The West Virginia Alcoholic Beverage Control Commissioner, in consultation with the
62 Bureau for Public Health concerning sanitation, is authorized to propose rules for legislative
63 approval, pursuant to §29A-3-1 et seq. of this code, to implement this section.

§60-8A-7. Rule-making authorization.

1 The West Virginia Alcoholic Beverage Control Commissioner is authorized to propose
2 rules for legislative approval, pursuant to §29A-3-1 et seq. of this code, to implement this article.

NOTE: The purpose of this bill is to facilitate the economic development of hard cider in this state by reclassifying hard cider in code.

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