

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

**ENROLLED**

**House Bill 4159**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2020 MAR 25 P 5:17

FILED

BY DELEGATES CRISS, ESPINOSA, ELLINGTON, BARRETT,

BATES, GRAVES, SPONAUGLE, WILLIAMS, LINVILLE,

COWLES AND HARDY

[Passed March 7, 2020; in effect ninety days from passage.]

HB 4159 (veto)

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1 AN ACT 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 code;  
3 to amend and reenact §60-8-2, §60-8-3, §60-8-4, §60-8-18, and §60-8-29 of said code;  
4 and to add a new article to said code designated §60-8A-1, §60-8A-2, §60-8A-3, §60-8A-  
5 4, §60-8A-5, §60-8A-6, and §60-8A-7; all relating to the manufacture and sale of wine and  
6 hard cider; all relating to the manufacture and sale of hard cider and wine; establishing  
7 the Agriculture Development Fund; establishing permitted expenditures from the fund;  
8 creating a new program to develop hard cider; providing for definitions; clarifying various  
9 aspects of wine, specifically the alcohol by volume percentage for table wine, wine, and  
10 fortified wine; adding the definition of “nonfortified dessert wine”; clarifying penalties for  
11 failure to meet requirements; replacing bond requirements that secure the payment of  
12 taxes by distributors, suppliers, certain wineries, and certain farm wineries, who are acting  
13 as either suppliers or distributors in a limited capacity, with an affidavit; providing penalties  
14 for failure to pay taxes and maintain good standing with the state; providing that there is  
15 no separate license required to manufacture and sell hard cider under certain conditions;  
16 providing for a hard cider distributor’s license; providing for hard cider exemptions to the  
17 wine liter tax; establishing a hard cider gallon tax; providing for applicability of other laws;  
18 requiring regular reports to the Tax Commissioner; providing for applications to import  
19 products necessary to manufacture hard cider under certain conditions; providing for hard  
20 cider sales for consumption; providing for complementary samples to be given;  
21 establishing requirements for complementary samples; permitting the sale of growlers;  
22 establishing growler labeling requirements; establishing growler sanitation requirements;  
23 providing for fees for the privilege to sell growlers; providing for rule-making authority;  
24 providing certain limited authority to unlicensed wineries not currently licensed or located  
25 in West Virginia; temporarily authorizing limited sampling and temporarily authorizing the

26 limited sale of wine for off-premises consumption at certain fairs and festivals and at  
27 certain one-day special licensed nonprofit events in a very limited capacity.

*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 where  
19 the alcohol content by volume does not exceed 24 percent, and shall include nonfortified dessert  
20 wines where the alcohol content by volume is greater than 17 percent and does not exceed 24  
21 percent.

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

29 with respect to such separate or segregated portion (exclusive of sales of wine) of not less than  
30 \$3,000 and an average monthly inventory (exclusive of inventory of wine) of not less than \$3,000.

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

37 "Hard Cider Distributor" means any person whose principal place of business is within the  
38 State of West Virginia who makes purchases from a supplier to sell or distribute hard cider, but  
39 not other types of wine, to retailers, grocery stores, private wine bed and breakfasts, private wine  
40 restaurants, private wine spas, private clubs, or wine specialty shops under authority of this code  
41 and maintains a warehouse in this state for the distribution of hard cider, but not other types of  
42 wine. For the purpose of a hard cider distributor, the term "person" means and includes an  
43 individual, firm, trust, partnership, limited partnership, limited liability company, association, or  
44 corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor  
45 licensee, and the trustee, or any other person or persons in active control of the activities of the  
46 trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to  
47 the distributor license that are unlawful acts or violations of this article, notwithstanding the liability  
48 of trustees in §44-10-1 *et seq.* of this code.

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

50 "Nonfortified dessert wine" means a wine that is a dessert wine to which brandy or other  
51 alcohol has not been added, and which has an alcohol content by volume of at least 14.1 percent  
52 and less than or equal to 17 percent.

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

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

65           “Private wine restaurant” means a restaurant which: (1) Is a partnership, limited  
66 partnership, corporation, unincorporated association, or other business entity which has as its  
67 principal purpose the business of serving meals on its premises to its members and their guests;  
68 (2) is licensed under the provisions of this article as to all of its premises or as to a separate  
69 segregated portion of its premises to serve wine to its members and their guests when such sale  
70 accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-  
71 paying members and their guests while in the company of a member and does not admit the  
72 general public. Such private clubs that meet the private wine restaurant requirements numbered  
73 (1), (2), and (3) in this definition shall be considered private wine restaurants.

74           “Private wine spa” means any business with the sole purpose of providing commercial  
75 facilities devoted especially to health, fitness, weight loss, beauty, therapeutic services, and  
76 relaxation, and may be also a licensed massage parlor or a salon with licensed beauticians or  
77 stylists, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated  
78 association, or other business entity which as part of its general business purpose provides meals  
79 on its premises to its members and their guests; (2) is licensed under the provisions of this article  
80 as to all of its premises or as to a separate segregated portion of its premises to serve up to two



81 glasses of wine to its members and their guests when such sale accompanies the serving of food  
82 or meals; and (3) admits only duly elected and approved dues-paying members and their guests  
83 while in the company of a member, and does not admit the general public.

84 “Retailer” means any person licensed to sell wine at retail to the public at his or her  
85 established place of business for off-premises consumption and who is licensed to do so under  
86 authority of this article.

87 “Supplier” means any manufacturer, producer, processor, winery, farm winery, national  
88 distributor, or other supplier of wine who sells or offers to sell or solicits or negotiates the sale of  
89 wine to any licensed West Virginia distributor.

90 “Table wine” means a wine with an alcohol content by volume between 0.5 percent and  
91 14 percent.

92 “Tax” includes within its meaning interest, additions to tax, and penalties.

93 “Taxpayer” means any person liable for any tax, interest, additions to tax, or penalty under  
94 the provisions of this article, and any person claiming a refund of tax.

95 “Varietal wine” means any wine labeled according to the grape variety from which such  
96 wine is made.

97 “Vintage wine” or “vintage-dated wine” means wines from which the grapes used to  
98 produce such wine are harvested during a particular year, or wines produced from the grapes of  
99 a particular harvest in a particular region of production.

100 “Wine” means any alcoholic beverage obtained by the natural fermentation of the natural  
101 content of grapes, other fruits, or honey or other agricultural products containing sugar and to  
102 which no alcohol has been added and shall include table wine, hard cider, nonfortified dessert  
103 wine, wine coolers, and other similar wine-based beverages. Fortified wine and any product  
104 defined as or embraced within the definition of nonintoxicating beer under the provisions of §11-  
105 16-1 *et seq.*, of this code are excluded from this definition of wine.

106 "Wine specialty shop" means a retailer who shall deal principally in the sale of table wine,  
107 nonfortified dessert wines, wine accessories, and food or foodstuffs normally associated with wine  
108 and: (1) Who shall maintain a representative number of such wines for sale in his or her inventory  
109 which are designated by label as varietal wine, vintage, generic, and/or according to region of  
110 production and the inventory shall contain not less than 15 percent vintage or vintage-dated wine  
111 by actual bottle count; and (2) who, any other provisions of this code to the contrary  
112 notwithstanding, may maintain an inventory of port, sherry, and Madeira wines having an alcoholic  
113 content of not more than 22 percent alcohol by volume and which have been matured in wooden  
114 barrels or casks. All wine available for sale is for off-premises consumption except where wine  
115 tasting or wine sampling is separately authorized by the code.

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

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

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 (7) An unlicensed winery temporarily licensed and meeting the requirements set forth in  
124 subsection (q) of this section may conduct the same sampling and sales set forth in subsection  
125 (q) of this section at a licensed fair and festival upon approval of the licensee holding the fair and  
126 festival license and temporary and limited licensure by the commissioner. An unlicensed winery  
127 shall be subject to the same limits, fees, requirements, restrictions and penalties set forth in  
128 subsection (q) of this section: *Provided,* That the commissioner may by rule or order provide for  
129 certain waivers or exceptions with respect to the provisions, rules, or orders as the circumstances  
130 of each festival or fair may require, including, without limitation, the right to revoke or suspend any  
131 license issued pursuant to this section prior to any notice or hearing notwithstanding the  
132 provisions §60-8-27 and §60-8-28 of this code: *Provided, however,* That under no circumstances  
133 shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception  
134 be granted with respect to those subsections.

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

145 days prior to the first day when wine is to be sold at the professional baseball stadium. The special  
146 license may be issued in the name of the baseball franchisee or the name of the primary food and  
147 beverage vendor under contract with the baseball franchisee. These sales must take place within  
148 the confines of the professional baseball stadium. The exterior of the area where wine sales may  
149 occur must be surrounded by a fence or other barrier prohibiting entry except upon the  
150 franchisee's express permission, and under the conditions and restrictions established by the  
151 franchisee, so that the wine sales area is closed to free and unrestricted entry by the general  
152 public.

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

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

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



171 members and their guests in accordance with the provisions of this article and in accordance with  
172 rules promulgated by the commissioner for the purpose of consumption of said wine off premises:  
173 *Provided, however,* That for this article, food or a meal provided by the private licensee means  
174 that the total food purchase, excluding beverage purchases, taxes, gratuity, or other fees is at  
175 least \$15: *Provided further,* That a licensed private wine restaurant or a private club may offer for  
176 sale, for consumption off the premises, sealed bottles of wine to its customers provided that no  
177 more than one bottle is sold per each person over 21 years of age, as verified by the private wine  
178 restaurant or private club, for consumption off the premises. Such licensees are authorized to  
179 keep and maintain on their premises a supply of wine in quantities appropriate for the conduct of  
180 operations thereof. Any sale of wine is subject to all restrictions set forth in §60-8-20 of this code.  
181 A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer  
182 as provided by §11-16-1 *et seq.* of this code.

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

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

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

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

195 (o) A wine specialty shop under this article may also hold a wine sampling license  
196 authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine

197 specialty shop location during regular hours of business. The wine specialty shop may serve up  
198 to three complimentary samples of wine, consisting of no more than two fluid ounces each, to any  
199 one consumer in one day. Persons serving the complimentary samples must be 21 years of age  
200 and an authorized representative of the licensed wine specialty shop, winery, farm winery, or a  
201 representative of a distributor or registered supplier. Distributor and supplier representatives  
202 attending wine sampling events must be registered with the commissioner. No licensee,  
203 employee, or representative may furnish, give, sell, or serve complimentary samples of wine to  
204 any person less than 21 years of age or to a person who is physically incapacitated due to the  
205 consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and  
206 secure permission from the commissioner for all wine sampling events one month prior to the  
207 event. Wine sampling events may not exceed six hours per calendar day. Licensees must  
208 purchase all wines used during these events from a licensed farm winery or a licensed distributor.

209 (p) The commissioner may issue special one-day licenses to duly organized, nonprofit  
210 corporations and associations allowing the sale and serving of wine, and may, if applicable, also  
211 allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only,  
212 when raising money for athletic, charitable, educational, or religious purposes. "Auction or  
213 auctioning", for the purposes of this subsection, means any silent, physical act, or verbal bid  
214 auction, whether or not such auction requires in-presence bidding or online Internet-based  
215 electronic bidding through a secure application or website, but shall not include any action in  
216 violation of §47-20-10, §47-20-11, or §61-10-1 *et seq.* of this code. The license application shall  
217 contain information required by the commissioner and shall be submitted to the commissioner at  
218 least 30 days prior to the event. Wines used during these events may be donated by, or purchased  
219 from, a licensed retailer, a distributor, winery, or a farm winery. A licensed winery or farm winery  
220 which is authorized in writing by a representative of the duly organized, nonprofit corporation and  
221 association which has obtained the one-day license; is in good standing with the state; and obtains

222 the commissioner's approval prior to the one-day license event may, in conjunction with the one-  
223 day licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed of three, two-  
224 fluid ounce tastings or samples per patron, for consumption on the premises during the operation  
225 of the one-day license event; and may sell certain sealed wine bottles manufactured by the  
226 licensed winery or farm winery for off-premises consumption: *Provided*, That for a licensed winery  
227 or farm winery at a licensed one-day event, the tastings, samples and off-premises sales shall  
228 occur under the hours of operation as required in this article, except on Sunday, tastings, samples,  
229 and off-premises sales are unlawful between the hours of 2:00 a.m. and 10:00 a.m., from the one-  
230 day licensee's submitted floor plan for the event subject to the requirements in the code and rules.  
231 Under no circumstances may the provisions of §60-8-20(c) or §60-8-20(f) of this code be waived  
232 nor may any exception be granted with respect to those subsections. No more than six licenses  
233 may be issued to any single licensee during any calendar year.

234 (q) (1) In addition to the authorization granted to licensed wineries and farm wineries in  
235 subsections (h) and (p), an unlicensed winery, regardless of its designation in another state, but  
236 that is duly licensed in its domicile state, may pay a \$150 nonrefundable and nonprorated fee and  
237 submit an application for temporary licensure on a one-day basis for temporary sampling and sale  
238 of wine in sealed containers for off-premises consumption at a special one-day license nonprofit  
239 event.

240 (2) The application shall include, but is not limited to, the person or entity's name, address,  
241 taxpayer identification number, and location; a copy of its licensure in its domicile state; a signed  
242 and notarized verification that it produces 50,000 gallons or less of wine per year; a signed and  
243 notarized verification that it is in good standing with its domicile state; copies of its federal  
244 certificate of label approvals and certified lab alcohol analysis for the wines it desires to  
245 temporarily provide samples and temporarily sell wine in sealed containers for off-premises

246 consumption at a special one-day license for a nonprofit event issued under sub-section (p); and  
247 such other information as the commissioner may reasonably require.

248 (3) The applicant winery shall include a list of all wines proposed to be temporarily sampled  
249 and temporarily sold in sealed containers at a special one-day license for a nonprofit event so  
250 that the wines may be reviewed in the interest of public health and safety. Once approved, the  
251 submitted wine list will create a temporary wine brand registration for up to two special one-day  
252 license for a nonprofit event for no additional fee.

253 (4) An applicant winery that receives this temporary special one-day license for a nonprofit  
254 event will provide a signed and notarized agreement where the applicant winery agrees to pay all  
255 municipal, local, and sales taxes applicable to the sale of wine in West Virginia.

256 (5) An application must be submitted per special one-day license for a nonprofit event the  
257 applicant winery desires to attend, and the license fee shall cover up to two special one-day  
258 license for nonprofit events before an additional fee would be paid. In no circumstance would such  
259 a winery be permitted to attend more than four special one-day license for nonprofit events per  
260 year. Any such applicant or unlicensed winery desiring to attend more than four special one-day  
261 license for nonprofit events per year or otherwise operate in West Virginia would need to seek  
262 appropriate licensure as a winery or a farm winery in this state.

263 (6) Notwithstanding the provisions of this article and requirements for licensure, wine  
264 brand registration, payment of wine liter tax, and the winery's appointment of suppliers and  
265 distributors, this temporary special one-day license for a nonprofit event, once granted, permits  
266 such a winery to operate in this limited capacity only at the approved specific, special one-day  
267 license for a nonprofit event subject to the limitations noted in this section.

268 (7) The applicant winery will need to further apply for and receive a transportation permit  
269 in order to legally transport wine in the state per §60-6-12 of this code.

270 (8) The applicant winery is subject to all applicable violations and/or penalties under this  
271 article and the legislative rules that is not otherwise excepted by this sub-section: *Provided, That*

272 the commissioner may by rule or order provide for certain waivers or exceptions with respect to  
273 the provisions, rules, or orders as the circumstances of each festival or fair may require, including,  
274 without limitation, the right to revoke or suspend any license issued pursuant to this section prior  
275 to any notice or hearing.

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

284 (s)(1) The commissioner may issue a special license for the retail sale of wine in a college  
285 stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and  
286 serve wine for consumption in a college stadium. For the purpose of this subsection, "college  
287 stadium" means a facility constructed primarily for the use of a Division I, II, or III college that is a  
288 member of the National Collegiate Athletic Association, or its successor, and used as a football,  
289 basketball, baseball, soccer, or other Division I, II, or III sports stadium. A special license issued  
290 pursuant to this subsection shall be for a term beginning on the date of its issuance and ending  
291 on the next following June 30, and its fee is \$250 regardless of the length of the term of the  
292 license. The application for the special license shall contain information required by the  
293 commissioner and must be submitted to the commissioner at least 30 days prior to the first day  
294 when wine is to be sold. The special license may be issued in the name of the National Collegiate  
295 Athletic Association Division I, II, or III college or university or the name of the primary food and  
296 beverage vendor under contract with that college or university. These sales must take place within

297 the confines of the college stadium: *Provided*, That the exterior of the area where wine sales may  
298 occur must be surrounded by a fence or other barrier prohibiting entry except upon the college or  
299 university's express permission, and under the conditions and restrictions established by the  
300 college or university, so that the wine sales area is closed to free and unrestricted entry by the  
301 general public.

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

310 (3) The commissioner may propose rules for promulgation in accordance with §29A-3-1  
311 *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.

**§60-8-18. Revocation, suspension, and other sanctions which may be imposed by the  
commissioner upon the licensee; procedure for appealing any final order of the  
commissioner which revokes, suspends, sanctions, or denies the issuance or  
renewal of any license issued under this article.**

1 (a) The commissioner may on his or her own motion, or shall on the sworn complaint of  
2 any person, conduct an investigation to determine if any provisions of this article or any rule  
3 promulgated or any order issued by the commissioner has been violated by any licensee. After  
4 investigation, the commissioner may impose penalties and sanctions as set forth below.

5 (1) If the commissioner finds that the licensee has violated any provision of this article or  
6 any rule promulgated or order issued by the commissioner, or if the commissioner finds the  
7 existence of any ground on which a license could have been refused, if the licensee were then  
8 applying for a license, the commissioner may:

9 (A) Revoke the licensee's license;

10 (B) Suspend the licensee's license for a period determined by the commissioner not to  
11 exceed 12 months; or

12 (C) Place the licensee on probation for a period not to exceed 12 months; and

13 (D) Impose a monetary penalty not to exceed \$1,000 for each violation where revocation  
14 is not imposed.

15 (2) If the commissioner finds that a licensee has willfully violated any provision of this  
16 article or any rule promulgated or any order issued by the commissioner, the commissioner shall  
17 revoke the licensee's license.

18 (b) Whenever the commissioner refuses to issue a license, or suspends or revokes a  
19 license, places a licensee on probation, or imposes a monetary penalty, he or she shall enter an  
20 order to that effect and cause a copy of the order to be served in person or by certified mail, return  
21 receipt requested, on the licensee or applicant.

22 (c) An applicant or licensee, as the case may be, adversely affected by the order has a  
23 right to a hearing before the commissioner if a written demand for hearing is served upon the  
24 commissioner within 10 days following the receipt of the commissioner's order by the applicant or  
25 licensee. Timely service of a demand for a hearing upon the commissioner operates to suspend  
26 the execution of the order with respect to which a hearing has been demanded, except an order  
27 suspending a license under the provisions of §60-8-29 of this code. The person demanding a  
28 hearing shall give security for the cost of the hearing in a form and amount as the commissioner  
29 may reasonably require. If the person demanding the hearing does not substantially prevail in the  
30 hearing or upon judicial review thereof as provided in subsections (f) and (g) of this section, then  
31 the costs of the hearing shall be assessed against him or her by the commissioner and may be  
32 collected by an action at law or other proper remedy.

33 (d) Upon receipt of a timely served written demand for a hearing, the commissioner shall  
34 immediately set a date for the hearing and notify the person demanding the hearing of the date,  
35 time, and place of the hearing, which shall be held within 30 days after receipt of the demand. At  
36 the hearing the commissioner shall hear evidence and thereafter enter an order supporting by  
37 findings of facts, affirming, modifying, or vacating the order. Any such order is final unless vacated  
38 or modified upon judicial review thereof.



39 (e) The hearing and the administrative procedure prior to, during, and following the hearing  
40 shall be governed by and in accordance with the provisions of §29A-5-1 *et seq.* of this code.

41 (f) Notwithstanding the provisions of §29A-5-4(b) of this code, an applicant or licensee  
42 adversely affected by a final order entered following a hearing has the right of judicial review of  
43 the order code in the Circuit Court of Kanawha County or the circuit court in the county where the  
44 proposed or licensed premises is located and will or does conduct sales: *Provided*, That in all  
45 other respects, such review shall be conducted in the manner provided in chapter 29A of this  
46 code. The petition for the review must be filed with the circuit court within 30 days following entry  
47 of the final order issued by the commissioner. An applicant or licensee obtaining judicial review is  
48 required to pay the costs and fees incident to transcribing, certifying, and transmitting the records  
49 pertaining to the matter to circuit court.

50 (g) The judgment of the circuit court reviewing the order of the commissioner is final unless  
51 reversed, vacated, or modified on appeal to the Supreme Court of Appeals in accordance with  
52 the provisions of §29A-6-1 of this code.

53 (h) Legal counsel and services for the commissioner in all proceedings in any circuit court  
54 and the Supreme Court of Appeals shall be provided by the Attorney General or his or her  
55 assistants and in any proceedings in any circuit court by the prosecuting attorney of that county  
56 as well, all without additional compensation.

**§60-8-29. Affidavit of compliance required of distributors and suppliers.**

1 Each applicant for a distributor's license or a supplier's license shall furnish at the time of  
2 application an affidavit of compliance with federal and state laws regarding tied house laws, trade  
3 practice requirements, and furnishing things of value requirements set forth in the code and the  
4 rules. Further, licensed distributors and suppliers who fail to pay their taxes to the Tax  
5 Commissioner or who are not otherwise in good standing with the state and its agencies shall be  
6 suspended upon 10 days' written notice by the commissioner. If the payment of taxes or good  
7 standing is not completed in 30 days from the date of suspension of the licensee's license, then

8 the licensee's license shall be revoked pursuant to the requirements of this article as it is a  
9 privilege to hold a license.

**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.

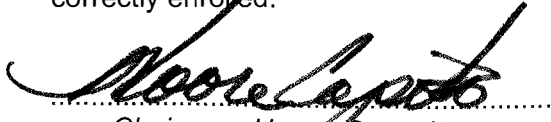
56 (k) *Nonapplicability of certain statutes.* — Notwithstanding any other provision of this code  
57 to the contrary, licensees under this section are permitted to break the seal of the original  
58 container for the limited purpose of filling a growler or providing complimentary samples as  
59 provided 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.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

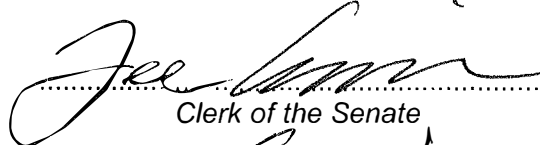
  
Chairman, House Committee

  
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

  
Clerk of the House of Delegates

  
Clerk of the Senate

  
Speaker of the House of Delegates

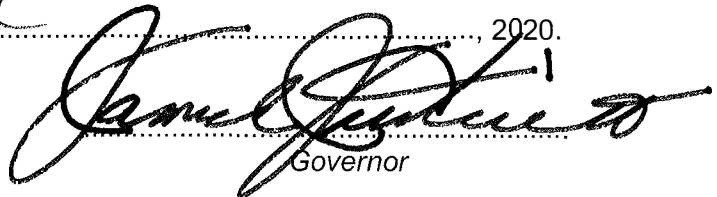
  
President of the Senate

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2020 MAR 25 P 5:17

FILED

The within *is disapproved* this the *25th*  
*March* day of \_\_\_\_\_, 2020.

  
Governor

PRESENTED TO THE GOVERNOR

MAR 19 2020

Time 1:15pm