

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5012

By Delegates Coop-Gonzalez, Dillon, Vance, Kirby,

Pinson, Burkhammer, and Butler

[Introduced January 23, 2024; Referred to the

Committee on Government Organization]

1 A BILL to amend and reenact §60-7-8e of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §60-8-6c and §60-8-6d of said code; all relating to removing
 3 references to the sale or distribution of alcohol as being in the best interest of the state.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

**§60-7-8e. Private club restaurant or private manufacturer club licensee’s authority to sell
craft cocktail growlers.**

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

9 (b) *Sales of craft cocktail growlers.* — A licensed private club restaurant or private
 10 manufacturer club is authorized under a current and valid license and meets the requirements of
 11 this section may offer a craft cocktail growler in the ratio of up to one fluid ounce of liquor to four
 12 fluid ounces of nonalcoholic beverages or mixers, not to exceed 128 fluid ounces for the entire
 13 beverage in the craft cocktail growler, for retail sale to patrons from their licensed premises in a
 14 sealed craft cocktail growler for personal consumption only off of the licensed premises. Prior to
 15 the sale, the licensee shall verify in-person, using proper identification, that any patron purchasing
 16 the craft cocktail growler is 21 years of age or older and that the patron is not visibly or noticeably
 17 intoxicated. There shall be a \$100 non-prorated, non-refundable annual fee to sell craft cocktail
 18 growlers.

19 (c) *Retail sales.* — Every licensee licensed under this section shall comply with all the

20 provisions of this chapter as applicable to retail sale of liquor at retail liquor outlets, comply with
21 markup specified in §60-3A-17(e)(2) of this code when conducting sealed craft cocktail growler
22 sales, and shall be subject to all applicable requirements and penalties in this article.

23 (d) *Payment of taxes.* — Every licensee licensed under this section shall pay all sales
24 taxes required of retail liquor outlets, in addition to any other taxes required, and meet any
25 applicable licensing provisions as required by this chapter and by rule of the commissioner.

26 (e) *Advertising.* — Every licensee licensed under this section may only advertise a
27 particular brand or brands of liquor manufactured by a distillery, mini-distillery, or micro-distillery
28 upon written approval from the distillery, mini-distillery, micro-distillery, or an authorized and
29 licensed broker to the licensee. Advertisements may not encourage intemperance or target
30 minors.

31 (f) *Craft cocktail growler defined.* — For purposes of this chapter, "Craft Cocktail Growler"
32 means a container or jug that is made of glass, ceramic, metal, plastic, or other material approved
33 by the commissioner, that may be no larger than 128 fluid ounces in size and must be capable of
34 being securely sealed. The growler is utilized by an authorized licensee for purposes of off-
35 premises sales only of liquor and a nonalcoholic mixer or beverage for personal consumption not
36 on a licensed premise. Notwithstanding any other provision of this code to the contrary, a securely
37 sealed craft cocktail growler is not an open container under state and local law. A craft cocktail
38 growler with a broken seal is an open container under state and local law unless it is located in an
39 area of the motor vehicle physically separated from the passenger compartment. A craft cocktail
40 growler is not an original container of liquor, but once sanitized, filled, properly sealed, and sold, all
41 as set forth in this article, is a sealed container.

42 (h) *Craft cocktail growler requirements.* — A licensee licensed under this section must
43 prevent patrons from accessing the secure area where the filling of the craft cocktail occurs or to fill
44 a craft cocktail growler. A licensee licensed under this section must sanitize, fill, securely seal, and
45 label any craft cocktail growler prior to its sale. A licensee licensed under this section may refill a

46 craft cocktail growler subject to the requirements of this section. A licensee licensed under this
47 section shall visually inspect any craft cocktail growler before filling or refilling it. A licensee
48 licensed under this section may not fill or refill any craft cocktail growler that appears to be
49 cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container. For purposes
50 of this article, a secure sealing means using a tamper-evident seal, such as: (1) A plastic heat
51 shrink wrap band, strip, or sleeve extending around the cap or lid of craft cocktail growler to form a
52 seal that must be broken when the container is opened; or (2) A screw top cap or lid that breaks
53 apart when the craft cocktail growler is opened.

54 (i) *Craft cocktail growler labeling.* — A licensee licensed under this section selling craft
55 cocktail growlers shall affix a conspicuous label on all sold and securely sealed craft cocktail
56 growlers listing the name of the licensee selling the craft cocktail growler, the brand of the liquor in
57 the craft cocktail growler, the type of craft cocktail or name of the craft cocktail, the alcohol content
58 by volume of the liquor in the craft cocktail growler, and the date the craft cocktail growler was filled
59 or refilled, and, all labeling on the craft cocktail growler shall be consistent with all federal labeling
60 and warning requirements.

61 (j) *Craft cocktail growler sanitation.* — A licensee licensed under this section shall clean
62 and sanitize all craft cocktail growlers he or she fills or refills in accordance with all state and
63 county health requirements prior to its sealing. In addition, the licensee licensed under this section
64 shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe
65 lines, barrel tubes, and any other related equipment used to fill or refill craft cocktail growlers.
66 Failure to comply with this subsection may result in penalties under this article: *Provided*, That, if
67 the reuse or refilling of a craft cocktail growler would violate federal law such craft cocktail growler
68 must only be used one-time, for one filling, and be discarded after the one-time use.

69 (k) *Pre-mixing of craft cocktail.* - A licensee licensed under this section may pre-mix the
70 nonalcoholic beverages or mixers in the advance of a craft cocktail growler purchase and sealing,
71 and add the liquor, as set forth in this section, upon a member or guest's purchase of a craft

72 cocktail growler. A licensee licensed under this section must dispose of any expired premixed
 73 nonalcoholic beverages or mixers pursuant to Bureau for Public Health requirements when such
 74 premixed nonalcoholic beverages or mixers are no longer fit for human consumption. A licensee
 75 authorized under §60-6-8(7) may use a premixed beverage meeting the requirements therein and
 76 is also subject to the requirements of this section for a craft cocktail growler.

77 (l) *Limitations on licensees.* — A licensee licensed under this section shall not sell craft
 78 cocktail growlers to other licensees, but only to its members and guests. A licensee licensed under
 79 this section must provide food or a meal along with one sealed craft cocktail growler to a patron
 80 who is in-person or in-vehicle while picking up food or a meal, and a sealed craft cocktail growler
 81 order-to-go, subject to verification that the purchasing person is 21 years of age or older, and not
 82 visibly or noticeably intoxicated, and as otherwise specified in this article. A licensee licensed
 83 under this section may only sell one sealed craft cocktail growler to a patron who has not been
 84 consuming alcoholic liquors or nonintoxicating beer on its licensed premises or one craft cocktail
 85 growler per food or meal in the order delivered per §60-7-8f of this code. A licensee licensed under
 86 this section shall be subject to the applicable penalties under this article for violations of this article.

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

ARTICLE 8. SALE OF WINES.

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

1 (a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to
 2 ~~regulate, control, and support~~ regulate and control the brewing, manufacturing, distribution, sale,
 3 consumption, transportation, and storage of wine and its industry in this state to protect the public
 4 health, welfare, and safety of the citizens of this state. ~~and promote hospitality and tourism~~
 5 Therefore, this section authorizes a licensed winery or farm winery with its principal place of

6 business and manufacture located in this state to have certain abilities to promote the sale of wine
7 manufactured in this state. ~~for the benefit of the citizens of this state, the state's growing wine~~
8 ~~industry, and the state's hospitality and tourism industry, all of which are vital components for the~~
9 ~~state's economy~~

10 (b) *Sales of wine.* — A licensed winery or farm winery with its principal place of business
11 and manufacture located in the State of West Virginia may, when licensed under this section, offer
12 only wine manufactured by the licensed winery or farm winery for retail sale to customers from the
13 winery or farm winery's licensed premises for consumption off of the licensed premises only in the
14 form of original container sealed wine kegs, wine bottles, or wine cans, or also a sealed wine
15 growler for personal consumption, and not for resale. A licensed winery or farm winery may not
16 sell, give, or furnish wine for consumption on the premises of the principal place of business and
17 manufacture located in the State of West Virginia, except for the limited purpose of complimentary
18 samples as permitted in subsection (c) of this section or unless separately licensed as a private
19 wine restaurant or a private manufacturer club.

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

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

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

30 (f) *Advertising.* — A winery or farm winery under this section may advertise a particular
31 brand or brands of wine produced by the licensed winery or farm winery and the price of the wine

32 subject to state and federal requirements or restrictions. The advertisement may not encourage
33 intemperance or target minors.

34 (g) *Wine Growler defined.* — For purposes of this section and section §60-8-6d of the
35 code, "wine growler" means a container or jug that is made of glass, ceramic, metal, or other
36 material approved by the commissioner, that may be no larger than 128 fluid ounces in size and is
37 capable of being securely sealed. The growler may be used by an authorized licensee for
38 purposes of off-premises sales only of wine for personal consumption, and not for resale. The wine
39 served and sold in a sealed wine growler may include ice or water mixed with the wine to create a
40 frozen alcoholic beverage. Any frozen alcoholic beverage machine used for filling wine growlers
41 shall be sanitized daily and shall be under control and served by the licensee from the secure area.
42 Notwithstanding any other provision of this code to the contrary, a securely sealed wine growler is
43 not an open container under state and local law. A wine growler with a broken seal is an open
44 container under state and local law unless it is located in an area of the motor vehicle physically
45 separated from the passenger compartment. For purpose of this article, a secure seal means
46 using a tamper evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve
47 extending around the cap or lid of wine growler to form a seal that shall be broken when the
48 container is opened; or (2) A screw top cap or lid that breaks apart when the wine growler is
49 opened.

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

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

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

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

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

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

**§60-8-6d. Wine retailer, wine specialty shop, private wine restaurant, private wine bed and
breakfast, private wine spa, Class B retail dealer, private club restaurant, private
manufacturer club, Class A retail licensee, and Class B retail licensee's authority to
sell wine growlers.**

1 (a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to
2 ~~regulate, control, and support~~ regulate and control the brewing, manufacturing, distribution, sale,
3 consumption, transportation, and storage of wine and its industry in this state to protect the public
4 health, welfare, and safety of the citizens of this state ~~and promote hospitality and tourism.~~
5 Therefore, this section authorizes a licensed wine retailer, wine specialty shop, private wine
6 restaurant, private wine bed and breakfast, private wine spa, private club restaurant, private
7 manufacturer club, Class A retail licensee, or Class B retail licensee to have certain abilities in
8 order to promote the sale of wine manufactured in this state. ~~for the benefit of the citizens of this~~
9 ~~state, the state's growing wine industry, and the state's hospitality and tourism industry, all of which~~
10 ~~are vital components for the state's economy~~

11 (b) *Sales of wine.* — A licensed wine retailer, wine specialty shop, private wine restaurant,
12 private wine bed and breakfast, private wine spa, private club restaurant, private manufacturer
13 club, Class A retail licensee, or Class B retail licensee who pays the fee in subsection (h) of this
14 section and meets the requirements of this section may offer wine for retail sale to patrons from the
15 licensed premises in a sealed wine growler for personal consumption off of the licensed premises,
16 and not for resale. Prior to the sale, the licensee shall verify, using proper identification, that any
17 patron purchasing wine is 21 years of age or over and that the patron is not visibly intoxicated. The
18 nonprorated, nonrefundable annual fee to sell wine growlers is \$100.

19 (c) *Retail sales.* — Every licensee authorized under this section shall comply with all the
20 provisions of this article as applicable to wine retailers when conducting sales of wine in a wine
21 growler and is subject to all applicable requirements and penalties in this article.

22 (d) *Payment of taxes and fees.* — A licensee authorized under this section shall pay all
23 taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required,
24 and meet applicable licensing provisions as required by this chapter and by rule of the
25 commissioner.

26 (e) *Advertising.* — A licensee authorized under this section may advertise a particular

27 brand or brands of wine and the price of the wine, subject to state and federal requirements or
28 restrictions. The advertisement may not encourage intemperance or target minors.

29 (f) *Wine Growler defined and requirements.* — A licensee authorized under this section
30 shall use the wine growler definition and requirements in §60-8-6c(g) and §60-8-6c(h) of this code.

31 (g) *Wine Growler labeling and sanitation.* — A licensee authorized under this section shall
32 label and sanitize wine growlers as set forth in §60-8-6c(i) and §60-8-6c(j) of this code.

33 (h) *Complimentary samples.* — A licensee authorized under this section may provide
34 complimentary wine growler samples to a person intending to purchase a wine growler which may
35 be no greater than two fluid ounces per wine growler sample and a wine growler sampling shall not
36 exceed three complimentary two fluid ounce samples per patron per day. A licensee authorized
37 under this section providing complimentary wine samples shall, prior to providing any samples,
38 verify that the patron sampling wine is 21 years of age or older and that the patron is not visibly or
39 noticeably intoxicated.

40 (i) *Limitations on licensees.* — A licensee under this section may only sell wine growlers
41 during the hours of operation set forth in this article. Any licensee licensed under this section shall
42 maintain a secure area for the sale and filling of wine in a wine growler. The secure area shall only
43 be accessible by the licensee. Any licensee licensed under this section is subject to the applicable
44 penalties under this article for violations.

45 (j) *Non-applicability of certain statutes.* — Notwithstanding any other provision of this
46 article to the contrary, licensees under this section are permitted to break the seal of the original
47 container for the limited purpose of filling a wine growler or providing complimentary wine samples
48 as provided in this section. Any unauthorized sale of wine or any consumption not permitted on the
49 licensee's licensed premises is subject to penalties under this article.

50 (k) *Rules.* — The commissioner may propose legislative rules for legislative approval,
51 pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

NOTE: The purpose of this bill is to remove references to the sale or distribution of alcohol as being in the best interest of the state.

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