

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 629

SENATOR TRUMP, *original sponsor*

[Originating in the Committee on the Judiciary;

reported on February 3, 2020]

1 A BILL to amend and reenact §60-8-2, §60-8-18, and §60-8-29 of the Code of West Virginia,
2 1931, as amended, all relating to clarifying various aspects of wine, specifically the alcohol
3 by volume percentage for table wine, wine, and fortified wine; adding the definition of
4 “nonfortified dessert wine”; clarifying penalties for failure to meet requirements; replacing
5 bond requirements that secure the payment of taxes by distributors, suppliers, certain
6 wineries, and certain farm wineries who are acting as either suppliers or distributors in a
7 limited capacity with an affidavit; and providing penalties for failure to pay taxes and
8 maintain good standing with the state.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. SALE OF WINES.

PART II. SALE OF WINE GENERALLY.

§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 §44D-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 ~~which are not fortified having where an~~ the alcohol content by volume ~~of at least 14.1~~
21 ~~percent and not exceeding sixteen~~ is greater than 17 percent and does not exceed 24 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 “Licensee” means the holder of a license granted under the provisions of this article.

32 “Nonfortified dessert wine” means a wine that is a dessert wine to which brandy or other
33 alcohol has not been added and has an alcohol content by volume of at least 14.1 percent and
34 less than or equal to 17 percent.

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

37 “Private wine bed and breakfast” means any business with the sole purpose of providing,
38 in a residential or country setting, a hotel, motel, inn, or other such establishment properly zoned
39 as to its municipality or local ordinances, lodging and meals to its customers in the course of their

40 stay at the establishment, which business also: (1) Is a partnership, limited partnership,
41 corporation, unincorporated association, or other business entity which as part of its general
42 business purpose provides meals on its premises to its members and their guests; (2) is licensed
43 under the provisions of this article as to all of its premises or as to a separate segregated portion
44 of its premises to serve wine to its members and their guests when such sale accompanies the
45 serving of food or meals; and (3) admits only duly elected and approved dues-paying members
46 and their guests while in the company of a member and does not admit the general public.

47 "Private wine restaurant" means a restaurant which: (1) Is a partnership, limited
48 partnership, corporation, unincorporated association, or other business entity which has as its
49 principal purpose the business of serving meals on its premises to its members and their guests;
50 (2) is licensed under the provisions of this article as to all of its premises or as to a separate
51 segregated portion of its premises to serve wine to its members and their guests when such sale
52 accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-
53 paying members and their guests while in the company of a member and does not admit the
54 general public. Such private clubs that meet the private wine restaurant requirements numbered
55 (1), (2), and (3) in this definition shall be considered private wine restaurants.

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

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

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

72 “Table wine” means a wine with an alcohol content by volume between 0.5 percent and
73 14 percent.

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

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

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

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

82 “Wine” means any alcoholic beverage obtained by the natural fermentation of the natural
83 content of grapes, other fruits, or honey or other agricultural products containing sugar and to
84 which no alcohol has been added and shall include table wine, nonfortified dessert wine, wine
85 coolers, and other similar wine-based beverages. ~~shall exclude fortified~~ Fortified wine and ~~shall~~
86 ~~also exclude~~ any product defined as or embraced within the definition of nonintoxicating beer
87 under the provisions of §11-16-1 *et seq.*, of this code are excluded from this definition of wine.

88 “Wine specialty shop” means a retailer who shall deal principally in the sale of table wine,
89 nonfortified dessert wines, wine accessories, and food or foodstuffs normally associated with wine
90 and: (1) Who shall maintain a representative number of such wines for sale in his or her inventory
91 which are designated by label as varietal wine, vintage, generic, and/or according to region of

92 production and the inventory shall contain not less than 15 percent vintage or vintage-dated wine
93 by actual bottle count; and (2) who, any other provisions of this code to the contrary
94 notwithstanding, may maintain an inventory of port, sherry, and Madeira wines having an alcoholic
95 content of not more than 22 percent alcohol by volume and which have been matured in wooden
96 barrels or casks. All wine available for sale is for off-premises consumption except where wine
97 tasting or wine sampling is separately authorized by the code.

**§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) If a supplier or distributor fails or refuses to keep in effect the bond required by section~~
19 ~~twenty nine of this article, the commissioner shall automatically suspend the supplier or~~
20 ~~distributor's license until the bond required by section twenty of this article is furnished to the~~
21 ~~commissioner, at which time the commissioner shall vacate the suspension~~

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

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

37 ~~(e)~~ (d) Upon receipt of a timely served written demand for a hearing, the commissioner
38 shall immediately set a date for the hearing and notify the person demanding the hearing of the
39 date, time, and place of the hearing, which shall be held within 30 days after receipt of the
40 demand. At the hearing the commissioner shall hear evidence and thereafter enter an order

41 supporting by findings of facts, affirming, modifying, or vacating the order. Any such order is final
42 unless vacated or modified upon judicial review thereof.

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

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

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

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

§60-8-29. Bond 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 ~~a bond with a corporate surety authorized to transact business in this state, payable~~
3 ~~to the state, and conditioned on the payment of all taxes and fees herein prescribed and on the~~
4 ~~faithful performance of and compliance with the provisions of this article. The penal sum of the~~

5 ~~bond for distributors shall be \$10,000 and the penal sum of the bond for suppliers shall be~~
6 ~~\$10,000. Each distributor shall be required to furnish separate bond for each location or separate~~
7 ~~place of business from which wine is distributed, sold or delivered. Revocation or forfeiture of the~~
8 ~~bond furnished for any such location may, in the discretion of the commissioner, cause the~~
9 ~~revocation or forfeiture of all such bonds furnished by the distributor suffering such revocation or~~
10 ~~forfeiture~~ an affidavit of compliance with federal and state laws regarding tied house laws, trade
11 practice requirements, and furnishing things of value requirements set forth in the code and the
12 rules. Further, licensed distributors and suppliers who fail to pay their taxes to the Tax
13 Commissioner or who are not otherwise in good standing with the state and its agencies shall be
14 suspended upon 10 days' written notice by the commissioner. If the payment of taxes or good
15 standing is not completed in 30 days from the date of suspension of the licensee's license, then
16 the licensee's license shall be revoked pursuant to the requirements of this article as it is a
17 privilege to hold a license.

NOTE: The purpose of this bill is to address the alcohol by volume percentage of wine which has gradually increased based on better techniques in the natural fermentation process for wine. Thus, the alcohol by volume (abv) has naturally been growing and this (like was done for nonintoxicating beer) bill defines (previously only defined in rule) and clarifies that the table wine alcohol by volume is up to 14%. The bill defines nonfortified dessert wines which may have an abv between 14.1% and 17%. The bill also clarifies fortified wine is up to 24% abv. The bill clarifies that wine may be sold by a wine specialty shop for off-premises consumption only except where tasting and sampling have been authorized. Lastly, the bill removes the bonding requirement for distributors and suppliers (and certain wineries or farm wineries acting in those capacities) and does continue the penalties for a distributor or supplier who fails to pay taxes or maintain its good standing with the state and its agencies. The bill also contains other technical edits.

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