

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 3311

BY DELEGATES HORNBY, PHILLIPS, WESTFALL, WILLIS,
HARDY, CHIARELLI, MAYNOR, DEAN, HITE, ESPINOSA, AND
MCGEEHAN

[Passed March 10, 2023; in effect ninety days from passage.]

1 AN ACT to amend and reenact §60-8-2 of the Code of West Virginia, 1931, as amended, relating
2 to the alcohol content of certain wines; changing the alcohol limit of table wine; changing
3 the minimum alcohol content of nonfortified dessert wine.

Be it enacted by the Legislature of West Virginia:

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 §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 includes 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 \$500. The term "grocery store" also includes and means a separate and
27 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 the separate or segregated portion (exclusive of sales of wine) of not less than
30 \$500 and an average monthly inventory (exclusive of inventory of wine) of not less than \$500.

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, labeled, 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 §44D-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 15.6 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 the 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 the 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. Private clubs that meet the private wine restaurant requirements numbered (1),
73 (2), and (3) in this definition shall be considered private wine restaurants: *Provided*, That, a private
74 wine restaurant shall have at least two restrooms: *Provided, however*, That the two restroom
75 requirement may be waived by a written waiver provided from a local health department to the
76 commissioner: *Provided further*, That a private wine restaurant located in an historic building may
77 also be relieved of the two restroom requirement if a historic association or district with jurisdiction
78 over a historic building provides a written waiver of the requirement to the commissioner: *And*
79 *Provided further*, That in no event shall a private wine restaurant have less than one restroom.

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

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

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

96 "Table wine" means a wine with an alcohol content by volume between 0.5 percent and
97 15.5 percent.

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

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

101 "Varietal wine" means any wine labeled according to the grape variety from which the wine
102 is made.

103 "Vintage wine" or "vintage-dated wine" means wines from which the grapes used to
104 produce the wine are harvested during a particular year, or wines produced from the grapes of a
105 particular harvest in a particular region of production.

106 "Wine" means any alcoholic beverage obtained by the natural fermentation of the natural
107 content of grapes, other fruits, or honey or other agricultural products containing sugar to which
108 no alcohol has been added and includes table wine, hard cider, nonfortified dessert wine, wine
109 coolers, and other similar wine-based beverages. Fortified wine and any product defined as or
110 contained within the definition of nonintoxicating beer under the provisions of §11-16-1 *et seq.*, of
111 this code are excluded from this definition of wine.

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

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2023.

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Governor