

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 3311

By Delegates Hornby, Phillips, Westfall, Willis, Hardy,

Chiarelli, Maynor, Dean, Hite, Espinosa, and

McGeehan

[Originating in the Committee on Government

Organization; Reported on February 8, 2023]

1 A BILL to amend and reenact §60-8-2 of the Code of West Virginia, 1931, as amended, relating to
2 increasing the alcohol content by volume limit for certain wines; changing the alcohol limit
3 for table wine from 14 percent to 15.5 percent; changing the minimum alcohol content of
4 nonfortified dessert wine from 14.1 percent to 15.6 percent.

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

17 "Fortified wine" means any wine to which brandy or other alcohol has been added where
18 the alcohol content by volume does not exceed 24 percent, and includes nonfortified dessert

19 wines where the alcohol content by volume is greater than 17 percent and does not exceed 24
20 percent.

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

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

36 "Hard Cider Distributor" means any person whose principal place of business is within the
37 State of West Virginia who makes purchases from a supplier to sell or distribute hard cider (but not
38 other types of wine) to retailers, grocery stores, private wine bed and breakfasts, private wine
39 restaurants, private wine spas, private clubs, or wine specialty shops under authority of this code
40 and maintains a warehouse in this state for the distribution of hard cider (but not other types of
41 wine). For the purpose of a hard cider distributor, the term "person" means and includes an
42 individual, firm, trust, partnership, limited partnership, limited liability company, association, or
43 corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee,
44 and the trustee, or any other person or persons in active control of the activities of the trust relating

45 to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor
46 license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in
47 §44D-10-1 *et seq.* of this code.

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

49 "Nonfortified dessert wine" means a wine that is a dessert wine to which brandy or other
50 alcohol has not been added, and which has an alcohol content by volume of at least ~~14.4~~ 15.6
51 percent and less than or equal to 17 percent.

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

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

64 "Private wine restaurant" means a restaurant which: (1) Is a partnership, limited
65 partnership, corporation, unincorporated association, or other business entity which has, as its
66 principal purpose, the business of serving meals on its premises to its members and their guests;
67 (2) is licensed under the provisions of this article as to all of its premises or as to a separate
68 segregated portion of its premises to serve wine to its members and their guests when the sale
69 accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-
70 paying members and their guests while in the company of a member and does not admit the

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

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

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

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

95 "Table wine" means a wine with an alcohol content by volume between 0.5 percent and 44
96 15.5 percent.

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

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

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

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

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

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

NOTE: The purpose of this bill is to increase the alcohol limit on table wine from 14% to 15% to be comparable to beer as otherwise provided for in the code. The bill also raises the minimum alcohol content by volume threshold for nonfortified dessert wines.

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