

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4646

By Delegate Pushkin

[Introduced January 12, 2024; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §60-4-3a of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §60-7-11 of said code, all relating to allowing a bar to purchase liquor
 3 from a distillery or a mini-distillery if it is within 10 miles of the distillery or mini-distillery and
 4 the liquor was made at the distillery or mini-distillery.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. LICENSES.

§60-4-3a. Distillery, mini-distillery, and micro-distillery license to manufacture and sell.

1 (a) Sales of liquor. — An operator of a distillery, mini-distillery, or micro-distillery may offer
 2 liquor for retail sale:

3 (1) to customers from the distillery, mini-distillery, or micro-distillery for consumption off
 4 premises only. Except for complimentary samples offered pursuant to §60-6-1 of this code,
 5 customers may not consume any liquor on the premises of the distillery, mini-distillery, or micro-
 6 distillery and except for a distillery, mini-distillery, or micro-distillery that obtains a private
 7 manufacturer club license set forth in §60-7-1 *et seq.* of this code, and a Class A retail dealer
 8 license set forth in §11-16-1 *et seq.* of the code: *Provided*, That a licensed distillery, mini-distillery,
 9 or micro-distillery may offer complimentary samples of alcoholic liquors as authorized by this
 10 subsection when alcoholic liquors are manufactured by that licensed distillery, mini-distillery, or
 11 micro-distillery for consumption on the licensed premises. Notwithstanding any other provision of
 12 law to the contrary, a licensed distillery, mini-distillery, or micro-distillery may sell, furnish, and
 13 serve alcoholic liquors when licensed accordingly beginning at 6:00 a.m. unless otherwise
 14 determined by the residents of the county pursuant to §7-1-3ss of this code.

15 (2) To a licensee under §60-7-1 *et seq.* of this code when the licensed operation is within
 16 10 miles of the distillery, mini-distillery, or micro-distillery.

17 (b) Retail off-premises consumption sales. — Every licensed distillery, mini-distillery, or
 18 micro-distillery shall comply with the provisions of §60-3A-9, §60-3A-11, §60-3A-13, §60-3A-16,
 19 §60-3A-17, §60-3A-18, §60-3A-19, §60-3A-22, §60-3A-23, §60-3A-24, §60-3A-25, and §60-3A-

20 26 of this code, and the provisions of §60-3-1 *et seq.* and §60-4-1 *et seq.* of this code, applicable to
21 liquor retailers and distillers. In the interest of promoting tourism throughout the state, every
22 licensed distillery, mini-distillery, or micro-distillery manufacturing liquor in this state is authorized,
23 with a limited off-site retail privilege at private fair and festivals, for off-premises consumption sales
24 of only the licensed distillery, mini-distillery, or micro-distillery's sealed liquor. At least five days
25 prior to an approved private fair and festival, an authorized distillery, mini-distillery, or micro-
26 distillery shall provide a copy of a written agreement to sell only liquor manufactured by the
27 licensed distillery, mini-distillery, or micro-distillery at the private fair and festival's licensed
28 premises. If approved, an authorized distillery, mini-distillery, or micro-distillery may conduct off-
29 premises consumption sales of their liquor from a designated booth at the private fair and festival
30 as set forth in §60-7-8a of this code. All authorized and approved distilleries, mini-distilleries, and
31 micro-distilleries' off-premises consumption sales shall comply with all retail requirements in §60-
32 3A-1 *et seq.* of this code, and specifically §60-3A-17 of this code with respect to all markups,
33 taxes, and fees. Additionally, every authorized distillery, mini-distillery, and micro-distillery may
34 provide complimentary samples to patrons who are 21 years of age and older and who are not
35 intoxicated. The complimentary liquor samples of the licensed distillery, mini-distillery, or micro-
36 distillery's product on any sampling day shall not exceed:

37 (1) Three separate and individual samples serving per customer verified to be 21 years of
38 age or older; and

39 (2) One and one-half ounces in total volume. Samples may be mixed with each other or
40 with non-alcoholic liquids as long as the total amount of the liquor sampled does not exceed one
41 and one-half ounces.

42 (c) Payment of taxes and fees. — The distillery, mini-distillery, or micro-distillery shall pay
43 all taxes and fees required of licensed retailers and meet applicable licensing provisions as
44 required by this chapter and by rule of the commissioner, except for payments of the wholesale
45 markup percentage and the handling fee provided by rule of the commissioner: *Provided*, That all

46 liquor for sale to customers from the distillery, mini-distillery, or micro-distillery for off-premises
47 consumption and licensees under §60-7-1 et seq. of this code, as allowed by §60-4-3a(a)(2), is are
48 subject of to a five percent wholesale markup fee and an 80 cents per case bailment fee to be paid
49 to the commissioner: *Provided, however*, That liquor sold by the distillery, mini-distillery, or micro-
50 distillery shall not be priced less than the price set by the commissioner pursuant §60-3A-17 of this
51 code.

52 (d) Payments to market zone retailers. — Each distillery, mini-distillery, or micro-distillery
53 shall submit to the commissioner two percent of the gross sales price of each retail liquor sale for
54 the value of all sales at the distillery, mini-distillery, or micro-distillery each month. This collection
55 shall be distributed by the commissioner, at least quarterly, to each market zone retailer located in
56 the distillery, mini-distillery, or micro-distillery's market zone, proportionate to each market zone
57 retailer's annual gross prior years pretax value sales. The maximum amount of market zone
58 payments that a distillery, mini-distillery, or micro-distillery shall submit to the commissioner is
59 \$15,000 per annum.

60 (e) Limitations on licensees. — A distillery, mini-distillery, or micro-distillery may not
61 produce more than 50,000 gallons per calendar year. The commissioner may issue more than one
62 distillery, mini-distillery, or micro-distillery license to a single person or entity and a person may
63 hold both a distillery and a mini-distillery license. The owners of a licensed distillery, mini-distillery,
64 or micro-distillery may operate a winery, farm winery, brewery, or as a resident brewer as
65 otherwise specified in the code.

66 (f) Building code and tax classification. — Notwithstanding any provision of this code to the
67 contrary, the mere addition of a distillery, mini-distillery, or micro-distillery licensed under this
68 article on a property does not change the nature or use of the property which otherwise qualifies as
69 agricultural use for building code and property tax classification purposes.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-11. Licensee must purchase alcoholic liquors from or through commissioner or retail

licensee;**exceptions.**

1 (a)(1) All licensees shall purchase all alcoholic liquors sold by them from the West Virginia
2 Alcohol Beverage Control Commissioner at prices established by the commissioner for sales of
3 the alcoholic liquors to the public generally or from any retail licensee licensed under the
4 provisions of article three-a of this chapter, except that the:

5 (A) Licensees may purchase those wines permitted to be sold at retail pursuant to article
6 eight of this chapter from those distributors licensed pursuant to said article at the same prices the
7 distributors sell the wines to retailers licensed pursuant to said article; and

8 (B) Licensees may make purchases from a distillery or a mini-distillery as allowed by §60-
9 4-3a(a)(2) of this code.

10 (2) A licensee may by contract approved by the commissioner receive deliveries of
11 alcoholic liquor from a retail liquor store, and the provisions of sections twelve and thirteen, article
12 six of this chapter shall not apply to the transportation of that alcoholic liquor.

13 (b) In all reports filed under section sixteen, article fifteen, chapter eleven of this code, retail
14 licensees licensed under the provisions of article three-a of this chapter shall separately identify
15 the amount of sales tax on sales of liquor to licensees in the manner required by the Tax
16 Commissioner.

17 (c) Notwithstanding the provisions of section thirty, article fifteen, chapter eleven of this
18 code to the contrary, the amount of the sales taxes collected by the Tax Commissioner shall be
19 deposited in a revolving fund account in the State Treasurer's office, designated the "drunk driving
20 prevention fund", and administered by the commission on drunk driving prevention, subject to
21 appropriations by the Legislature.

NOTE: The purpose of this bill is to allow a bar to purchase liquor from a distillery or a mini-distillery if it is within 10 miles of the distillery or mini-distillery.

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