

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5294

By Delegates W. Clark, Espinosa, Howell, Hardy,
Horst, Dittman, Miller, Householder, Hite, Crouse, and
Hornby

[Introduced January 29, 2024; Referred to the
Committee on Economic Development and Tourism
then Government Organization]

1 A BILL to amend and reenact §60-1-5a of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §60-4-3b of said code; to amend and reenact §60-8-2, §60-8-6c, §60-8-8, and
 3 §60-8-32a of said code; and to amend and reenact §60-8A-5 of said code, as amended, all
 4 relating to revising and updating the code regulating farm wineries in West Virginia to allow
 5 the state's farm winery industry to be more competitive with farm wineries in adjacent
 6 states.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5a. Farm wineries defined.

1 (a) For the purpose of this chapter "Farm winery" means: ~~an establishment where in any~~
 2 ~~year 50,000 gallons or less of wine, which includes hard cider, and nonfortified dessert wine are~~
 3 ~~manufactured exclusively by natural fermentation from grapes, apples, pears, peaches, other~~
 4 ~~fruits or honey, or other agricultural products containing sugar and where port, sherry, and Madeira~~
 5 ~~wine may also be manufactured, with 25 percent of such raw products being produced by the~~
 6 ~~owner of the farm winery on the premises of that establishment and no more than 25 percent of~~
 7 ~~such produce originating from any source outside this state. Any port, sherry, or Madeira wine~~
 8 ~~manufactured by a winery or a farm winery shall not exceed an alcoholic content of 22 percent~~
 9 ~~alcohol by volume and shall be matured in wooden barrels or casks~~

10 (1) For a Class I farm winery, all of the fruits or agricultural products used to manufacture
 11 wine shall be grown or produced on the farm winery's farm located in West Virginia. A Class I farm
 12 winery shall have a growing area no smaller than one and one-half acres that produces fruits or
 13 agricultural products used in the manufacture of the farm winery's wine. A Class I farm winery
 14 shall ferment on the farm winery's farm no more than 2,250 liters of wine per year which shall be
 15 fermented on the farm winery's farm located in West Virginia.

16 (2) For a Class II farm winery, at least 51 percent of the fruits or agricultural products used
 17 to manufacture the farm winery's wine shall be grown or produced on property in the State of West

18 Virginia that is owned or leased by the farm winery and no more than 25 percent of the fruits or
19 agricultural products used to manufacture wine shall be grown or produced outside the State of
20 West Virginia. A Class II farm winery shall have on the licensed premises a growing area no
21 smaller than three acres that produces fruits or agricultural products used to manufacture the wine
22 of such farm winery. A Class II farm winery shall ferment on the farm winery's farm no more than
23 3,375 liters of wine per year which shall be fermented on the farm winery's farm located in West
24 Virginia.

25 (3) For a Class III farm winery, 75 percent of the fruits or agricultural products used to
26 manufacture wine shall be grown or produced in the State of West Virginia. A Class III farm winery
27 shall have on the licensed premises a growing area no smaller than six acres that produces fruits
28 or agricultural products used to manufacture the wine of such farm winery. A Class III farm winery
29 shall ferment on the licensed premises no more than 4,500 liters of wine per year, and no less than
30 75 percent of the wine sold by such licensee shall be fermented on the farm winery's farm.

31 (4) For a Class IV farm winery, 75 percent of the fruits or agricultural products used by the
32 farm winery to manufacture wine shall be grown or produced in the State of West Virginia. A Class
33 IV farm winery shall have a growing area no smaller than 10 acres that produces fruits or
34 agricultural products used to manufacture the farm winery's wine. No Class IV farm winery license
35 shall be issued to any person that has not operated under an existing smaller class of farm winery
36 for at least seven years.

37 (5) A farm winery may trade or purchase with other farm wineries fruits or agricultural
38 products grown or produced on their farm that is owned or leased and located in the state of West
39 Virginia. For the purposes of this section, fruit or agricultural products traded, exchanged or
40 purchased between farm wineries shall be considered grown or produced on the farm of the
41 receiving farm winery for the purposes of meeting the fruit sourcing requirement in subdivisions
42 (1), (2), (3), and (4), provided that verification is provided to the receiving farm winery that the fruit
43 or agricultural products traded or exchanged were grown or produced in the state of West Virginia

44 by the farm winery engaging in such trade or exchange. Both farm wineries shall maintain
45 complete and accurate records of the quantity and source of any fruit or agricultural products
46 traded or exchanged. Such trades or exchanges shall be bona fide transactions based on the fair
47 market value of the fruits or agricultural products traded or exchanged. For the purposes of this
48 subsection, "agricultural products" means the raw materials used or intended to be used in the
49 manufacture of wine or cider by farm winery or cidery.

50 (6) Notwithstanding the provisions of subdivisions (1), (2), (3), and (4), upon petition by the
51 Secretary of the Department of Agriculture, the West Virginia Alcohol Beverage Control
52 Commissioner may permit the use (i) of a greater quantity of out-of-state products if the fruit grown
53 or produced in the state of West Virginia are insufficient for a farm winery licensee, whether Class
54 I, Class II, Class III, or Class IV, to achieve the level of production that otherwise could be
55 anticipated during a given license year or (ii) by a Class I, Class II, Class III, or Class IV farm
56 winery of a lesser percentage of products grown or produced on the farm wineries farm or on other
57 property in the state of West Virginia that is owned or leased by the farm winery, as applicable, if
58 unusually severe weather or disease conditions cause a significant reduction in the availability of
59 fruit or other agricultural products grown or produced on such property to manufacture wine during
60 a given year.

61 (b) Notwithstanding the provisions of subsection (a) of this section, a farm winery may
62 include one off-farm location. The owner of a farm winery may provide to the commissioner
63 evidence, accompanied by written findings by the West Virginia Agriculture Commissioner in
64 support thereof, that the owner has planted on the premises of the farm winery young nonbearing
65 fruit plants. The commissioner may grant permission for one off-farm location when the location
66 produces in an amount equal to that reasonably expected to be produced when the nonbearing
67 fruit plants planted on the farm winery come into full production. The length of time of the
68 permission to use an off-farm location shall be determined by the commissioner after consultation
69 with the Agriculture Commissioner.

ARTICLE**4.****LICENSES.****§60-4-3b. Winery and farm winery license to manufacture and sell.**

1 (a) An operator of a winery or farm winery may offer wine produced by the winery, farm
 2 winery, or a farm entity authorized by §60-1-5c of this code, for retail sale to customers from the
 3 winery or farm winery for consumption on or off the premises only. Customers may consume wine
 4 on the premises when an operator of a winery or farm winery offers ~~complimentary~~ samples
 5 pursuant to §60-4-3b(q), §60-4-3b(r), and §60-6-1 of this code, the winery or farm winery is
 6 licensed as a private wine restaurant, or the winery or farm winery is licensed as a private
 7 manufacturer club. Customers may not consume any wine on the licensed premises of the winery,
 8 farm winery, or a farm entity authorized by §60-1-5c of this code, unless the winery, farm winery, or
 9 farm entity has obtained a multi-capacity winery or farm winery license: *Provided*, That under this
 10 subsection, a licensed winery or farm winery may offer ~~complimentary~~ samples of wine
 11 manufactured by that licensed winery or farm winery for consumption on the premises only on
 12 Sundays beginning at 6:00 a.m. in any county in which the same has been approved as provided
 13 in §7-1-3ss during the hours of operation set forth in §60-8-1 et seq. of this code. Notwithstanding
 14 any other provision of law to the contrary, a licensed winery or farm winery may sell, serve, and
 15 furnish wine, for on-premises consumption when licensed accordingly, beginning at 6:00 a.m., and
 16 for off-premises consumption beginning at 6:00 a.m. on any day of the week, unless otherwise
 17 determined by the residents of the county pursuant to §7-1-3ss of this code.

18 (b) Local restriction upon activities and events of farm wineries licensed in accordance with
 19 §60-4-3b of the code to market and sell their products shall be reasonable and shall take into
 20 account the economic impact on the farm winery of such restriction, the agricultural nature of such
 21 activities and events, and whether such activities and events are usual and customary for farm
 22 wineries throughout the state of West Virginia and adjacent states. Usual and customary activities
 23 and events at farm wineries shall be permitted without local regulation unless there is a substantial
 24 impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other

25 than outdoor amplified music, arising from activities and events at farm wineries shall be more
26 restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at a
27 farm winery, the locality shall consider the effect on adjacent property owners and nearby
28 residents.

29 (c) No locality may treat private personal gatherings held by the owner of a licensed farm
30 winery who resides at the farm winery or on property adjacent thereto that is owned or controlled
31 by such owner at which gatherings wine is not sold or marketed and for which no consideration is
32 received by the farm winery or its agents differently from private personal gatherings by other
33 citizens.

34 (d) No locality shall regulate any of the following activities of a farm winery licensed in
35 accordance with subsection (b) of §60-4-3b of the code:

36 (1) The production and harvesting of fruit and other agricultural products and the
37 manufacturing of wine;

38 (2) The on-premises sale, tasting, or consumption of wine during regular business hours
39 set forth in §60-4-3b(a), §60-4-3b(q) and §60-4-3b(r) of the code within the normal course of
40 business of the licensed farm winery;

41 (3) The direct sale and shipment of wine by common carrier to consumers in accordance
42 with the requirements of §60-8-6 and §60-8-6a of this code and the regulations of the West Virginia
43 Alcohol Beverage Control Commissioner;

44 (4) The storage, warehousing, and wholesaling of wine in accordance with the regulations
45 of the West Virginia Alcohol Beverage Control Commissioner, and federal law; or

46 (5) The sale of wine-related items, including but not limited to the sale of pre-packaged
47 food not requiring kitchen preparation, that are incidental to the sale of wine and/or consumption of
48 wine on premises.

49 (e) ~~(b) Complimentary samples~~ Samples allowed by the provisions of this section may not
50 exceed two fluid ounces and no more than ~~three~~ six samples may be given to a patron in any one

51 day.

52 ~~(f) (c) Complimentary samples~~ Samples may be provided only for on-premises
53 consumption.

54 ~~(g) (d)~~ A winery, farm winery, or farm entity, pursuant to §60-1-5c of this code, may offer for
55 retail sale from their licensed premises sealed original container bottles of wine for off-premises
56 consumption only.

57 ~~(h) (e)~~ A winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code,
58 holding a multi-capacity license and a private wine restaurant license may offer wine by the drink
59 or glass in a private wine restaurant located on the property of the winery, farm winery, or farm
60 entity licensed pursuant to §60-1-5c of this code.

61 ~~(i) (f)~~ Every licensed winery or farm winery shall comply with the provisions of §60-3-1 *et*
62 *seq.*, §60-4-1 *et seq.*, and §60-8-1 *et seq.* of this code as applicable to wine retailers, wineries, and
63 suppliers when properly licensed in such capacities.

64 ~~(j) (g)~~(1) The winery or farm winery shall pay all taxes and fees required of licensed wine
65 retailers and meet applicable licensing provisions as required by this chapter and by rules
66 promulgated by the commissioner.

67 (2) Each winery or farm winery acting as its own supplier shall submit to the Tax
68 Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in
69 §60-8-1 *et seq.* of this code.

70 (3) The five percent wine excise tax, levied pursuant to §60-3-9d of this code, or pursuant
71 to §8-13-7 of this code, may not be imposed or collected on purchases of wine in the original
72 sealed package for the purpose of resale in the original sealed package, if the final purchase of the
73 wine is subject to the excise tax or if the purchase is delivered outside this state.

74 (4) A liter tax shall not be collected on wine sold in the original sealed package for the
75 purpose of resale in the original sealed package if a subsequent sale of the wine is subject to the
76 liter tax.

77 (5) This section shall not be interpreted to authorize a purchase for resale exemption in
78 contravention of §11-15-9a of this code.

79 (k) ~~(h)~~ A winery or farm winery may advertise a particular brand or brands of wine produced
80 by it. The price of the wine is subject to federal requirements or restrictions.

81 (l) ~~(i)~~ A winery or farm winery shall maintain separate winery or farm winery supplier,
82 retailer, and direct shipper licenses when acting in one or more of those capacities and shall pay all
83 associated license fees, unless the winery or farm winery holds a license issued pursuant to the
84 provisions of §60-8-3(b)(12) of this code. A winery or farm winery, if holding the appropriate
85 licenses or a multi-capacity winery or farm winery license, may act as its own supplier; retailer for
86 off-premises consumption of its wine as specified in §60-6-2 of this code; private wine restaurant;
87 and direct shipper for wine produced by the winery or farm winery. A winery or farm winery that has
88 applied, paid all fees, and met all requirements may obtain a private manufacturer club license
89 subject to the requirements of §60-7-1 *et seq.* of this code, and a Class A retail dealer license
90 subject to the requirements of §11-16-1 *et seq.* of this code. All wineries shall use a distributor to
91 distribute and sell their wine in the state, except for farm wineries. Wineries or farm wineries may
92 enter into alternating wine proprietorship agreements, pursuant to §60-1-5c of this code.

93 (m) ~~(j)~~ The owners of a licensed winery or farm winery may operate a distillery, mini-
94 distillery, or micro-distillery, brewery, or as a resident brewer, as otherwise specified in the code.

95 (n) ~~(k)~~ For purposes of this section, terms have the same meaning as provided in §8-13-7
96 of this code.

97 (o) ~~(h)~~ Building code and tax classification. — Notwithstanding any provision of this code to
98 the contrary, the mere addition of a winery or farm winery licensed under this article on a property
99 does not change the nature or use of the property which otherwise qualifies as agricultural use for
100 building code and property tax classification purposes.

101 (p) ~~(m)~~ In the interest of promoting tourism throughout the state, every licensed winery or
102 farm winery manufacturing wine in this state is authorized, with a limited off-site retail privilege at

103 private fair and festivals, for off-premises consumption sales of only the winery or farm winery's
 104 sealed wine. At least five days prior to an approved private fair and festival, an authorized winery
 105 or farm winery shall provide a copy of a written agreement to sell only wine manufactured by the
 106 licensed winery or farm winery at the private fair and festival's licensed premises. If approved, an
 107 authorized licensed winery or farm winery may conduct off-premises consumption sales of their
 108 wine from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All
 109 authorized and approved wineries and farm wineries' off-premises consumption sales shall
 110 comply with all retail requirements in §60-8-1 *et seq.* of this code, and specifically with respect to
 111 all markups, taxes, and fees. Additionally, an authorized winery or farm winery may provide
 112 ~~complimentary~~ samples to patrons who are 21 years of age and older and who are not intoxicated
 113 in the amounts set forth in subsection (b).

114 (q) Farm Wineries. – Every farm winery with a Class I, II, III, or IV license shall be permitted
 115 to serve and sell wine by the glass and by the bottle for consumption on the premises, without the
 116 requirement to serve prepared food with the wine or application of any local health department
 117 limitations for food service in the area in which the wine is served. Prior to the sale, the licensee
 118 shall verify, using proper identification, that any patron purchasing wine is 21 years of age or over
 119 and that the patron is not visibly intoxicated.

120 (r) All West Virginia Farm Wineries possessing a Class I, II, III, or IV license may serve and
 121 sell wine by the glass or by the bottle at any fair or festival in the state 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 "Farm winery" means an establishment or cooperative located in the State of West Virginia
18 on land zoned agricultural that has a vineyard, orchard, or similar growing area that produces fruits
19 or other agricultural products used to manufacture the wine of such farm winery, subject to the
20 production volume and other requirements set forth in §60-1-5a of this code.

21 "Fortified wine" means any wine to which brandy or other alcohol has been added where
22 the alcohol content by volume does not exceed 24 percent, and includes nonfortified dessert
23 wines where the alcohol content by volume is greater than 17 percent and does not exceed 24
24 percent.

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

32 with respect to the separate or segregated portion (exclusive of sales of wine) of not less than
33 \$500 and an average monthly inventory (exclusive of inventory of wine) of not less than \$500.

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

40 "Hard Cider Distributor" means any person whose principal place of business is within the
41 State of West Virginia who makes purchases from a supplier to sell or distribute hard cider (but not
42 other types of wine) to retailers, grocery stores, private wine bed and breakfasts, private wine
43 restaurants, private wine spas, private clubs, or wine specialty shops under authority of this code
44 and maintains a warehouse in this state for the distribution of hard cider (but not other types of
45 wine). For the purpose of a hard cider distributor, the term "person" means and includes an
46 individual, firm, trust, partnership, limited partnership, limited liability company, association, or
47 corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee,
48 and the trustee, or any other person or persons in active control of the activities of the trust relating
49 to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor
50 license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in
51 §44D-10-1 *et seq.* of this code.

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

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

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

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

68 "Private wine restaurant" means a restaurant which: (1) Is a partnership, limited
69 partnership, corporation, unincorporated association, or other business entity which has, as its
70 principal purpose, the business of serving meals on its premises to its members and their guests;
71 (2) is licensed under the provisions of this article as to all of its premises or as to a separate
72 segregated portion of its premises to serve wine to its members and their guests when the sale
73 accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-
74 paying members and their guests while in the company of a member and does not admit the
75 general public. Private clubs that meet the private wine restaurant requirements numbered (1), (2),
76 and (3) in this definition shall be considered private wine restaurants: *Provided*, That, a private
77 wine restaurant shall have at least two restrooms: *Provided, however*, That the two restroom
78 requirement may be waived by a written waiver provided from a local health department to the
79 commissioner: *Provided further*, That a private wine restaurant located in an historic building may
80 also be relieved of the two restroom requirement if a historic association or district with jurisdiction
81 over a historic building provides a written waiver of the requirement to the commissioner: And
82 *Provided further*, That in no event shall a private wine restaurant have less than one restroom.

83 "Private wine spa" means any business with the sole purpose of providing commercial

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

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

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

99 "Table wine" means a wine with an alcohol content by volume between 0.5 percent and
100 15.5 percent.

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

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

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

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

109 "Wine" means any alcoholic beverage obtained by the natural fermentation of the natural

110 content of grapes, other fruits, or honey or other agricultural products containing sugar to which no
111 alcohol has been added and includes table wine, hard cider, nonfortified dessert wine, wine
112 coolers, and other similar wine-based beverages. Fortified wine and any product defined as or
113 contained within the definition of nonintoxicating beer under the provisions of §11-16-1 *et seq.*, of
114 this code are excluded from this definition of wine.

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

§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 the brewing, manufacturing, distribution, sale, consumption,
3 transportation, and storage of wine and its industry in this state to protect the public health,
4 welfare, and safety of the citizens of this state, and promote hospitality and tourism. Therefore, this
5 section authorizes a licensed winery or farm winery with its principal place of business and
6 manufacture located in this state to have certain abilities to promote the sale of wine manufactured
7 in this state for the benefit of the citizens of this state, the state's growing wine industry, and the
8 state's hospitality and tourism industry, all of which are vital components for the state's economy.

9 (b) *Sales of wine.* — A licensed ~~winery~~ or farm winery with its principal place of business

10 and manufacture located in the State of West Virginia may, when licensed under this section, offer
11 only wine manufactured by the licensed ~~winery~~ or farm winery for retail sale to customers from the
12 winery or farm winery's licensed premises for consumption off of the licensed premises only in the
13 form of original container sealed wine kegs, wine bottles, or wine cans, or also a sealed wine
14 growler for personal consumption, and not for resale. A licensed winery or farm winery may not
15 sell, give, or furnish wine for consumption on the premises of the principal place of business and
16 manufacture located in the State of West Virginia, except for the limited purpose of ~~complimentary~~
17 samples as permitted in subsection (c) of this section or unless separately licensed for on
18 premises sales in accordance with §60-4-3b of this code or separately licensed as a private wine
19 restaurant or a private manufacturer club.

20 (c) ~~Complimentary s~~ Samples. — A licensed winery or farm winery with its principal place
21 of business and manufacture located in the State of West Virginia may offer ~~complimentary~~
22 samples 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.

**§60-8-8. Permitting West Virginia Farm Wineries with Class A licenses to sell and serve
wine by the glass and bottle at West Virginia Fairs and Festivals.**

1 ~~Repealed.~~

2 ~~Acts, 1991 Reg. Sess., Ch. 118.~~

3 All Class I, II, III, or IV West Virginia Farm Wineries also possessing a Class A license may
4 serve and sell wine by the glass or by the bottle at any fair or festival in the state of West Virginia if
5 the fair or festival licensee grants the Class I, II, III, or IV West Virginia Farm Winery or Farm
6 Wineries permission to do so.

§60-8-32a. Where wine may be sold and consumed for on-premises consumption.

1 (a) With prior approval of the commissioner, a Class A wine licensee may sell, serve, and
2 furnish wine for on premises consumption in a legally demarcated area which may include a
3 temporary private wine outdoor dining area or a temporary private wine outdoor street dining area.
4 A temporary private wine outdoor street area shall be approved by the municipal government or
5 county commission in which the licensee operates. The commissioner shall develop and make
6 available an application form to facilitate the purposes of this subsection.

7 (b) The Class A wine licensee shall submit to a municipality or county commission for the
8 approval of the private wine outdoor dining area or private wine outdoor street dining area and
9 submit to the municipality or county commission a revised floorplan requesting to sell wine, subject
10 to the commissioner's requirements, in an approved and bounded outdoor area. For private wine
11 outdoor street dining or private wine outdoor dining the approved and bounded outdoor area need
12 not be adjacent to the licensee's licensed premises, but in close proximity and under the licensee's
13 control and with right of ingress and egress. For purposes of this section, "close proximity," means
14 an available area within 150 feet of the licensee's licensed premises.

15 (c) This private wine outdoor dining or private wine outdoor street dining may be operated
16 in conjunction with a private outdoor dining or private outdoor street dining area set forth in §60-7-
17 8d of this code, and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor
18 street dining set forth in §11-16-9 of this code.

19 (d) For purposes of this section, "private wine outdoor dining and private wine outdoor
20 street dining" include dining areas that are:

21 (1) Outside and not served by an HVAC system for air handling services and use outside
22 air;

23 (2) Open to the air; and

24 (3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally
25 approve a partial enclosure with up to three temporary or fixed walls.

26 Any areas where seating is incorporated inside a permanent building with ambient air
 27 through HVAC is not considered outdoor dining pursuant to this subsection.

28 (e) Class A licensees licensed for on-premises sales shall provide food, which may be pre-
 29 packaged food not requiring kitchen preparation, or a meal along with sealed wine in the original
 30 container or a sealed wine growler sales and service as set forth in this section and in §60-8-3 of
 31 this code, to a patron who is in-person or in-vehicle while picking up food and sealed wine in the
 32 original containers or sealed wine growlers ordered-to-go, subject to verification that the
 33 purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as
 34 otherwise specified in this article.

35 (f) Class I, II, III, and IV West Virginia Farm Wineries also possessing a Class A license
 36 may serve and sell wine by the glass or by the bottle in accordance with §60-8-32a(a) through (e).

ARTICLE 8A. MANUFACTURE AND SALE OF HARD CIDER.

1
**§60-8A-5. Winery or farm winery licensee's authority to manufacture, sell, and provide
 complimentary samples; growler sales; advertisements; taxes; fees; rulemaking.**

1 (a) Sales of hard cider. — A licensed winery or farm winery with its principal place of
 2 business or manufacturing facility located in the State of West Virginia may offer hard cider
 3 manufactured by the licensed winery or farm winery for retail sale to customers from the winery's
 4 or farm winery's licensed premises for consumption off of the licensed premises only in approved
 5 and registered hard cider kegs, bottles, or cans, or also sealed wine growlers for personal
 6 consumption and not for resale. A licensed winery or farm winery may not sell, give, or furnish hard
 7 cider for consumption on the premises of the principal place of business or manufacturing facility
 8 located in the State of West Virginia, except for the limited purpose of ~~complimentary~~ samples as
 9 permitted in subsection (b) of this section. "Wine Growler" has the meaning set forth in §60-8-6c(g)
 10 of this code.

11 (b) ~~Complimentary~~ Samples. — A licensed winery or farm winery with its principal place of

12 business or manufacturing facility located in the State of West Virginia may offer ~~complimentary~~
13 samples of hard cider manufactured at the winery's or farm winery's principal place of business or
14 manufacturing facility located in the State of West Virginia. The ~~complimentary~~ samples may be no
15 greater than two fluid ounces per sample per patron, and a sampling shall not exceed six
16 complimentary two-fluid ounce samples per patron per day. A licensed winery or farm winery
17 providing ~~complimentary~~ samples shall provide ~~complimentary~~ food, which may be pre-packaged
18 food not requiring kitchen preparation, items to the patron consuming the ~~complimentary~~ samples;
19 and prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of
20 age or older and that the patron is not noticeably or visibly intoxicated.

21 (c) Retail sales. — Every licensed winery or farm winery under this section shall comply
22 with all the provisions applicable to wine retailers when conducting sales of hard cider and is
23 subject to all applicable requirements and penalties. In the interest of promoting tourism
24 throughout the state, every licensed winery or farm winery manufacturing cider in this state is
25 authorized, with a limited off-site retail privilege at private fair and festivals, for off-premises
26 consumption sales of only the winery or farm winery's sealed hard cider. At least five days prior to
27 an approved private fair and festival, an authorized winery or farm winery shall provide a copy of a
28 written agreement to sell only hard cider manufactured by the licensed winery or farm winery at the
29 private fair and festival's licensed premises. If approved, an authorized winery or farm winery may
30 conduct off-premises consumption sales of their hard cider from a designated booth at the private
31 fair and festival as set forth in §60-7-8a of this code. All authorized and approved wineries and
32 farm wineries' off-premises consumption sales of hard cider shall comply with all retail
33 requirements in §60-8-1 *et seq.* of this code and §60-8A-1 *et seq.* of this code, and specifically with
34 respect to all markups, taxes, and fees.

35 (d) Payment of taxes and fees. — A licensed winery or farm winery under this section shall
36 pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees
37 required, and meet applicable licensing provisions as required by law and by rule of the

38 commissioner.

39 (e) Advertising. — A licensed winery or farm winery may advertise a particular brand or
40 brands of hard cider produced by the licensed winery or farm winery and the price of the hard cider
41 subject to state and federal requirements or restrictions. The advertisement may not encourage
42 intemperance or target minors.

43 (f) Growler requirements. — A licensed winery or farm winery, if offering wine growler filling
44 services, shall meet the filling, labeling, sanitation, and all other wine growler requirements in §60-
45 8-6c of this code.

46 (g) Fee. — There is no additional fee for a licensed winery or farm winery authorized under
47 §60-8-6c of this code, to sell wine growlers, if a winery or farm winery only desires to sell hard cider
48 in the wine growler, and no other wine, then the annual non-prorated and nonrefundable license
49 fee is \$50.

NOTE: The purpose of this bill is to revise and update the code regulating farm wineries in West Virginia to allow the state's farm winery industry to be more competitive with farm wineries in adjacent states.

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