

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 320

By Senators Rucker, Takubo, Jeffries, and Barrett

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

1 A BILL to amend and reenact §60-8-6d and §60-8-32a of the Code of West Virginia, 1931, as
 2 amended; and to amend said code by adding thereto a new section, designated §60-8-8,
 3 all relating to West Virginia wineries; removing the requirements for wineries to serve food
 4 in order to serve and sell wine by the glass or bottle; allowing the service of wine in glasses
 5 and the sale of bottles and glasses of wine for consumption of wine on winery properties
 6 both indoors or outdoors; and permitting the sale of wines made by West Virginia wineries
 7 at West Virginia wine festivals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. SALE OF WINES.

§60-8-6d. Wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, Class B retail dealer, private club restaurant, private manufacturer club, Class A retail licensee, and Class B retail licensee’s authority to sell wine growers.

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 wine retailer, wine specialty shop, private wine restaurant, private
 6 wine bed and breakfast, private wine spa, private club restaurant, private manufacturer club, Class
 7 A retail licensee, or Class B retail licensee to have certain abilities in order to promote the sale of
 8 wine manufactured in this state for the benefit of the citizens of this state, the state’s growing wine
 9 industry, and the state’s hospitality and tourism industry, all of which are vital components for the
 10 state’s economy.

11 (b) *Sales of wine.* — A licensed wine retailer, wine specialty shop, private wine restaurant,
 12 private wine bed and breakfast, private wine spa, private club restaurant, private manufacturer
 13 club, Class A retail licensee, or Class B retail licensee who pays the fee in subsection (h) of this

14 section and meets the requirements of this section may offer wine for retail sale to patrons from the
15 licensed premises in a sealed wine growler for personal consumption off of the licensed premises,
16 and not for resale. Prior to the sale, the licensee shall verify, using proper identification, that any
17 patron purchasing wine is 21 years of age or over and that the patron is not visibly intoxicated. The
18 nonprorated, nonrefundable annual fee to sell wine growlers is \$100.

19 (c) Wineries. — Every winery with a Class A license shall be permitted to serve and sell
20 wine by the glass and by the bottle to be consumed indoors or outdoors, within property of winery,
21 without the requirement to serve food with the wine or for any limitations on the type of area in
22 which this is served. Prior to the sale, the licensee shall verify, using proper identification, that any
23 patron purchasing wine is 21 years of age or over and that the patron is not visibly intoxicated.

24 ~~(d)~~ (d) Retail sales. — Every licensee authorized under this section shall comply with all
25 the provisions of this article as applicable to wine retailers when conducting sales of wine in a wine
26 growler and is subject to all applicable requirements and penalties in this article.

27 ~~(d)~~ (e) Payment of taxes and fees. — A licensee authorized under this section shall pay all
28 taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required,
29 and meet applicable licensing provisions as required by this chapter and by rule of the
30 commissioner.

31 ~~(e)~~ (f) Advertising. — A licensee authorized under this section may advertise a particular
32 brand or brands of wine and the price of the wine, subject to state and federal requirements or
33 restrictions. The advertisement may not encourage intemperance or target minors.

34 ~~(f)~~ (g) Wine Growler defined and requirements. — A licensee authorized under this section
35 shall use the wine growler definition and requirements in §60-8-6c(g) and §60-8-6c(h) of this code.

36 ~~(g)~~ (h) Wine Growler labeling and sanitation. — A licensee authorized under this section
37 shall label and sanitize wine growlers as set forth in §60-8-6c(i) and §60-8-6c(j) of this code.

38 ~~(h)~~ (i) Complimentary samples. — A licensee authorized under this section may provide
39 complimentary wine growler samples to a person intending to purchase a wine growler which may

40 be no greater than two fluid ounces per wine growler sample and a wine growler sampling shall not
 41 exceed three complimentary two fluid ounce samples per patron per day. A licensee authorized
 42 under this section providing complimentary wine samples shall, prior to providing any samples,
 43 verify that the patron sampling wine is 21 years of age or older and that the patron is not visibly or
 44 noticeably intoxicated.

45 ~~(i)~~ (j) *Limitations on licensees.* — A licensee under this section may only sell wine growlers
 46 during the hours of operation set forth in this article. Any licensee licensed under this section shall
 47 maintain a secure area for the sale and filling of wine in a wine growler. The secure area shall only
 48 be accessible by the licensee. Any licensee licensed under this section is subject to the applicable
 49 penalties under this article for violations.

50 ~~(j)~~ (k) *Non-applicability of certain statutes.* — Notwithstanding any other provision of this
 51 article to the contrary, licensees under this section are permitted to break the seal of the original
 52 container for the limited purpose of filling a wine growler or providing complimentary wine samples
 53 as provided in this section. Any unauthorized sale of wine or any consumption not permitted on the
 54 licensee's licensed premises is subject to penalties under this article.

55 ~~(k)~~ (l) *Rules.* — The commissioner may propose legislative rules for legislative approval,
 56 pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

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

1 All West Virginia Wineries possessing a Class A license may serve and sell wine by the
 2 glass or by the bottle at any wine festival in the state of West Virginia.

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

1 ~~(a) With prior approval of the commissioner, a A Class A wine licensee may sell, serve, and~~
 2 ~~furnish wine in glasses or bottles for on premises consumption, in a legally demarcated area which~~
 3 ~~may include a temporary private wine outdoor dining area or a temporary private wine outdoor~~
 4 ~~street dining area. A temporary private wine outdoor street area shall be approved by the~~

5 ~~municipal government or county commission in which the licensee operates. The commissioner~~
6 ~~shall develop and make 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 or a meal along~~
29 ~~with sealed wine in the original container or a sealed wine growler sales and service as set forth in~~
30 ~~this section and in §60-8-3 of this code, to a patron who is in-person or in-vehicle while picking up~~

31 ~~food and sealed wine in the original containers or sealed wine growlers ordered to go~~, subject to
32 verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably
33 intoxicated, and as otherwise specified in this article.

NOTE: The purpose of this bill is to remove the requirements for wineries to serve food in order to serve and sell wine by the glass or bottle; to allow the service of wine in glasses and sale of wine in bottles and glasses for consumption on winery properties both indoors and outdoors; and to permit the sale of wines made by West Virginia wineries at West Virginia wine festivals.

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