

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 320

By Senators Rucker and Takubo

[Originating in the Committee on the Judiciary;

reported January 29, 2024]

1 A BILL to amend and reenact §60-4-3b of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §60-6-1 of said code; and to amend and reenact §60-8-2 and §60-8-3 of said
3 code; all relating to wine generally; providing that persons or entities with a winery or farm
4 winery license, that hold a private wine restaurant and a multi-capacity winery or farm
5 winery license are not subject to the food service requirements to operate; allowing
6 wineries and farm wineries and out of state unlicensed wineries to sell and serve samples,
7 wine by the glass, and by the bottle at private fairs and festivals, one day non-profit events,
8 and on their premises; removing requirement that wine samples be complimentary;
9 allowing a winery or farm winery to have simultaneous licenses; and allowing wineries and
10 farm wineries to sell wine by the glass or bottle for on-premises consumption on the
11 property of the winery or farm winery.

Be it enacted by the Legislature of West Virginia:

§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 off the premises. ~~only~~ Customers may consume wine on
4 the premises when an operator of a winery or farm winery offers ~~complimentary~~ samples pursuant
5 to §60-6-1 of this code, the winery or farm winery is licensed as a private wine restaurant, or the
6 winery or farm winery is licensed as a private manufacturer club. Customers may not consume any
7 wine on the licensed premises of the winery, farm winery, or a farm entity authorized by §60-1-5c of
8 this code, unless the winery, farm winery, or farm entity has obtained a multi-capacity winery or
9 farm winery license: *Provided*, That under this subsection, a licensed winery or farm winery may
10 offer ~~complimentary~~ samples of wine manufactured by that licensed winery or farm winery for
11 consumption on the premises only on Sundays beginning at 6:00 a.m. in any county in which the
12 same has been approved as provided in §7-1-3ss of this code. Notwithstanding any other
13 provision of law to the contrary, a licensed winery or farm winery may sell, serve, and furnish wine,

14 for on-premises consumption when licensed accordingly, beginning at 6:00 a.m., and for off-
15 premises consumption beginning at 6:00 a.m. on any day of the week, unless otherwise
16 determined by the residents of the county pursuant to §7-1-3ss of this code.

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

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

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

23 (e) A winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code, holding
24 a multi-capacity license and a private wine restaurant license may offer wine for sale and service
25 by the drink or glass, ~~in a private wine restaurant located~~ which may be sold by the bottle when
26 consumed by the glass on the property of the winery, farm winery, or farm entity licensed pursuant
27 to §60-1-5c of this code.

28 (f) Every licensed winery or farm winery shall comply with the provisions of §60-3-1 *et seq.*,
29 §60-4-1 *et seq.*, and §60-8-1 *et seq.* of this code as applicable to wine retailers, wineries, and
30 suppliers when properly licensed in such capacities.

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

34 (2) Each winery or farm winery acting as its own supplier shall submit to the Tax
35 Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in
36 §60-8-1 *et seq.* of this code.

37 (3) The five percent wine excise tax, levied pursuant to §60-3-9d of this code, or pursuant
38 to §8-13-7 of this code, may not be imposed or collected on purchases of wine in the original
39 sealed package for the purpose of resale in the original sealed package, if the final purchase of the

40 wine is subject to the excise tax or if the purchase is delivered outside this state.

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

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

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

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

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

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

64 (l) Building code and tax classification. — Notwithstanding any provision of this code to the
65 contrary, the mere addition of a winery or farm winery licensed under this article on a property does

66 not change the nature or use of the property which otherwise qualifies as agricultural use for
67 building code and property tax classification purposes.

68 (m) In the interest of promoting tourism throughout the state, every licensed winery or farm
69 winery manufacturing wine in this state is authorized, with a limited off-site retail privilege at private
70 fair and festivals, for off-premises consumption sales of only the winery or farm winery's sealed
71 wine. At least five days prior to an approved private fair and festival, an authorized winery or farm
72 winery shall provide a copy of a written agreement to sell only wine manufactured by the licensed
73 winery or farm winery at the private fair and festival's licensed premises. If approved, an
74 authorized licensed winery or farm winery may conduct off-premises consumption sales of their
75 wine from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All
76 authorized and approved wineries and farm wineries' off-premises consumption sales shall
77 comply with all retail requirements in §60-8-1 *et seq.* of this code, and specifically with respect to
78 all markups, taxes, and fees. Additionally, an authorized winery, farm winery unlicensed as
79 referenced in §60-8-3 of this code ~~or may provide, sell, and serve complimentary wine samples in~~
80 the amounts set forth in subsection(b) of this section ~~or drinks wine by the bottle, or when~~
81 consumed by the glass, or by the glass for on-premises consumption to patrons who are 21 years
82 of age and older and who are not intoxicated. ~~in the amounts set forth in subsection (b).~~

§60-6-1. When lawful to possess, use, or serve alcoholic liquors.

1 The provisions of this chapter may not prevent:

2 (1) A person from keeping and possessing alcoholic liquors in his or her residence for the
3 personal use of himself or herself, his or her family, his or her employee, or his or her guests if the
4 alcoholic liquors have been lawfully acquired by him or her;

5 (2) A person, his or her family, or employee from giving or serving such alcoholic liquors to
6 guests in the residence, when the gift or service is not for the purpose of evading the provisions of
7 this chapter;

8 (3) The holder of a winery or a farm winery license from serving ~~complimentary~~ samples of

9 its wine ~~in moderate quantities~~ for tasting on the winery or the farm winery premises; and

10 (4) The holder of a distillery, mini-distillery, or a micro-distillery license from serving
11 complimentary samples of its alcoholic liquor in moderate quantities for tasting on the distillery,
12 mini-distillery, or micro-distillery premises.

§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 15.6 percent
51 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 wine
73 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. *And*
79 *Provided further*, That a winery or farm winery holding a private wine restaurant and a multi-
80 capacity winery or farm winery license is not subject to the food service requirements of this
81 subdivision.

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

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

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

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

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

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

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

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

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

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

§60-8-3. Licenses; fees; general restrictions.

1 (a) No person may engage in business in the capacity of a winery, farm winery, supplier,

2 distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine spa, or
3 wine specialty shop without first obtaining a license from the commissioner, nor shall a person
4 continue to engage in any activity after his or her license has expired, been suspended, or
5 revoked. No person may be licensed simultaneously as a distributor and a retailer. No person,
6 except for a winery or farm winery, may be licensed simultaneously as a supplier and a retailer. No
7 person except for a winery or farm winery holding a multi-capacity winery or farm winery license
8 may be licensed simultaneously as a supplier and a private wine bed and breakfast, private wine
9 restaurant, or a private wine spa. No person may be licensed simultaneously as a distributor and a
10 private wine bed and breakfast, a private wine restaurant, or a private wine spa. No person except
11 for a winery or farm winery or holding a multi-capacity winery or farm winery license may be
12 licensed simultaneously as a retailer and a private wine bed and breakfast, a private wine
13 restaurant, or a private wine spa. Any person who is licensed to engage in any business
14 concerning the manufacture, sale, or distribution of wine may also engage in the manufacture,
15 sale, or distribution of hard cider without obtaining a separate hard cider license.

16 (b) The commissioner shall collect an annual fee for licenses issued under this article as
17 follows:

18 (1) One hundred fifty dollars per year for a supplier's license;

19 (2) Two thousand five hundred dollars per year for a distributor's license and each separate
20 warehouse or other facility from which a distributor sells, transfers, or delivers wine shall be
21 separately licensed and there shall be collected with respect to each location, the annual license
22 fee of \$2,500 as provided in this subdivision;

23 (3) One hundred fifty dollars per year for a retailer's license;

24 (4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any
25 other licensing fees paid by a winery or retailer holding a license. Except for the amount of the
26 license fee and the restriction to sales of winery or farm winery wines, a winery, or farm winery
27 acting as a wine specialty shop retailer is subject to all other provisions of this article which are

28 applicable to a wine specialty shop retailer as defined in §60-8-2 of this code;

29 (5) One hundred fifty dollars per year for a wine tasting license;

30 (6) One hundred fifty dollars per year for a private wine bed and breakfast license. Each
31 separate bed and breakfast from which a licensee sells wine shall be separately licensed and
32 there shall be collected with respect to each location the annual license fee of \$150 as provided in
33 this subdivision;

34 (7) Two hundred fifty dollars per year for a private wine restaurant license. Each separate
35 restaurant from which a licensee sells wine shall be separately licensed and there shall be
36 collected with respect to each location the annual license fee of \$250 as provided in this
37 subdivision;

38 (8) One hundred fifty dollars per year for a private wine spa license. Each separate private
39 wine spa from which a licensee sells wine shall be separately licensed and there shall be collected
40 with respect to each location the annual license fee of \$150 as provided in this subdivision;

41 (9) One hundred fifty dollars per year for a wine sampling license issued for a wine
42 specialty shop under subsection (n) of this section;

43 (10) No fee for a special one-day license under subsection (p) of this section or for a
44 heritage fair and festival license under subsection (q) of this section;

45 (11) One hundred fifty dollars per year for a direct shipper's license for a licensee who sells
46 and ships only wine and \$250 per year for a direct shipper's license who ships and sells wine,
47 nonfortified dessert wine, port, sherry, or Madeira wines;

48 (12) Three hundred fifty dollars per year for a multi-capacity winery or farm winery license
49 which enables the holder to operate as a retailer, wine specialty shop, supplier, and direct shipper
50 without obtaining an individual license for each capacity; and

51 (13) Two hundred fifty dollars per year for a hard cider distributor's license. Each separate
52 warehouse or other facility from which a distributor sells, transfers, or delivers hard cider shall be
53 separately licensed and there shall be collected with respect to each location the annual license

54 fee of \$250 as provided in this subdivision: *Provided*, That if a licensee is licensed as a
55 nonintoxicating beer or nonintoxicating beer distributor, then there is no additional license fee to
56 distribute hard cider.

57 (c) The license period begins on July 1 of each year and ends on June 30 of the following
58 year and if granted for a less period, the same shall be computed semiannually in proportion to the
59 remainder of the fiscal year.

60 (d) No retailer may be licensed as a private club as provided by §60-7-1 *et seq.* of this
61 code, except as provided by subsection (k) of this section.

62 (e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as
63 provided by §11-16-1 *et seq.* of this code: *Provided*, That a delicatessen, a caterer, or party supply
64 store, which is a grocery store as defined in §60-8-2 of this code, and which is licensed as a Class
65 A retail dealer in nonintoxicating beer may be a retailer under this article: *Provided, however*, That
66 any delicatessen, caterer, or party supply store licensed in both capacities shall maintain average
67 monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average
68 monthly sales of nonintoxicating beer.

69 (f) A wine specialty shop under this article may also hold a wine tasting license authorizing
70 the retailer to serve complimentary samples of wine in moderate quantities for tasting. The wine
71 specialty shop shall organize a wine taster's club, which has at least 50 duly elected or approved
72 dues-paying members in good standing. The club shall meet on the wine specialty shop's
73 premises not more than one time per week and shall either meet at a time when the premises are
74 closed to the general public, or meet in a separate segregated facility on the premises to which the
75 general public is not admitted. Attendance at tastings shall be limited to duly elected or approved
76 dues-paying members and their guests.

77 (g) A retailer who has more than one place of retail business shall obtain a license for each
78 separate retail establishment. A retailer's license may be issued only to the proprietor or owner of
79 a bona fide grocery store or wine specialty shop.

80 (h)(1) The commissioner may issue a license for the retail sale of wine at any festival or fair
81 which is endorsed or sponsored by the governing body of a municipality or a county commission.
82 The license shall be issued for a term of no longer than 10 consecutive days and the fee for the
83 license is \$250 regardless of the term of the license. The application for the license shall contain
84 information required by the commissioner and shall be submitted to the commissioner at least 30
85 days prior to the first day when wine is to be sold at the festival or fair.

86 (2) Notwithstanding subdivision (1) of this subsection, if the applicant for the festival or fair
87 license is the manufacturer of the wine, a winery, or a farm winery as defined in §60-1-5a of this
88 code, and the event is located on the premises of a winery or a farm winery, then the license fee is
89 \$50 per festival or fair.

90 (3) A licensed winery or a farm winery, which has the festival or fair licensee's written
91 authorization and approval from the commissioner, may, in addition to, or in conjunction with the
92 festival and fair licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed
93 three, two-fluid ounce, tastings or samples per patron, or serve wine by the glass for consumption
94 on the premises during the operation of a festival or fair only; and may sell wine by the bottle for on-
95 premises consumption, when consumed by the glass, and off-premises consumption ~~only~~:
96 *Provided*, That for licensed wineries or farm wineries at a licensed festival or fair tastings, samples,
97 on-premises sales, and off-premises sales shall occur under the hours of operation as required in
98 this article, except on Sunday, tastings, samples, and off-premises sales are unlawful between the
99 hours of 2:00 a.m. and 6:00 a.m.

100 (4) A festival or fair license may be issued to a "wine club" as defined in this subdivision for
101 a license fee of \$250. The festival or fair committee or the governing body shall designate a person
102 to organize a club under a name which includes the name of the festival or fair and the words "wine
103 club". The license shall be issued in the name of the wine club. A licensee may not sell wine as
104 provided in this subdivision until the wine club has at least 50 dues-paying members who have
105 been enrolled, and to whom membership cards have been issued. Thereafter, new members may

106 be enrolled and issued membership cards at any time during the period for which the license is
107 issued. A wine club licensed under the provisions of this subdivision may sell wine only to its
108 members, and in portions not to exceed eight ounces per serving. The sales shall take place on
109 premises or in an area cordoned or segregated so as to be closed to the general public, and the
110 general public shall not be admitted to the premises or area. A wine club licensee under the
111 provisions of this subdivision may serve complimentary samples of wine in moderate quantities for
112 tasting. A wine club may not make wine purchases from a direct shipper where the wine may be
113 consumed on the licensed premises of any Class A private wine retail ~~license~~- licensee or private
114 club. A wine club which violates the provisions of this subdivision is subject to the penalties in this
115 article.

116 (5) A licensed winery or farm winery approved to participate in a festival or fair under the
117 provisions of this section and the licensee holding the license, or the licensed winery or farm
118 winery approved to attend a licensed festival or fair, is subject to all other provisions of this article
119 and the rules and orders of the commissioner relating to the license: *Provided*, That the
120 commissioner may by rule or order provide for certain waivers or exceptions with respect to the
121 provisions, rules, or orders required by the circumstances of each festival or fair, including, without
122 limitation, the right to revoke or suspend any license issued pursuant to this section prior to any
123 notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided*,
124 *however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this
125 code, be waived nor shall any exception be granted with respect to those subsections.

126 (6) A license issued under the provisions of this section and the licensee holding the
127 license are not subject to the provisions of subsection (g) of this section.

128 (7) An unlicensed winery temporarily licensed and meeting the requirements set forth in
129 subsection (q) of this section may conduct the same sampling and sales set forth in subsection (q)
130 of this section at a licensed fair and festival upon approval of the licensee holding the fair and
131 festival license and temporary and limited licensure by the commissioner. An unlicensed winery is

132 subject to the same limits, fees, requirements, restrictions, and penalties set forth in subsection (q)
133 of this section: *Provided*, That the commissioner may by rule or order provide for certain waivers or
134 exceptions with respect to the provisions, rules, or orders required by the circumstances of each
135 festival or fair. The commissioner may revoke or suspend any license issued pursuant to this
136 section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this
137 code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-
138 8-20(d) of this code be waived nor shall any exception be granted with respect to those
139 subsections.

140 (i)(1) The commissioner may issue a special license for the retail sale of wine in a
141 professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles
142 the licensee to sell and serve wine for consumption in a professional baseball stadium. For the
143 purpose of this subsection, "professional baseball stadium" means a facility constructed primarily
144 for the use of a major or minor league baseball franchisee affiliated with the National Association
145 of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league
146 baseball park. Any special license issued pursuant to this subsection shall be for a term beginning
147 on the date of issuance and ending on the next following June 30, and its fee is \$250 regardless of
148 the length of the term of the license. The application for the special license shall contain
149 information required by the commissioner and must be submitted to the commissioner at least 30
150 days prior to the first day when wine is to be sold at the professional baseball stadium. The special
151 license may be issued in the name of the baseball franchisee or the name of the primary food and
152 beverage vendor under contract with the baseball franchisee. These sales must take place within
153 the confines of the professional baseball stadium. The exterior of the area where wine sales may
154 occur shall be surrounded by a fence or other barrier prohibiting entry except upon the
155 franchisee's express permission, and under the conditions and restrictions established by the
156 franchisee, so that the wine sales area is closed to free and unrestricted entry by the general
157 public.

158 (2) A license issued under this subsection and the licensee holding the license are subject
159 to all other provisions of this article and the rules and orders of the commissioner relating to the
160 special license: *Provided*, That the commissioner may by rule or order grant certain waivers or
161 exceptions to those rules or orders required by the circumstances of each professional baseball
162 stadium. The commissioner may revoke or suspend any license issued pursuant to this section
163 prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided*,
164 *however*, That under no circumstances may §60-8-20(c) or §60-8-20(d) of this code be waived nor
165 shall any exception be granted concerning those subsections.

166 (3) The commissioner may propose legislative rules for promulgation in accordance with
167 §29A-3-1 *et seq.* of this code to implement this subsection.

168 (j) A license to sell wine granted to a private wine bed and breakfast, private wine
169 restaurant, private wine spa, or a private club under the provisions of this article entitles the
170 operator to sell and serve wine, for consumption on the premises of the licensee, when the sale
171 accompanies the serving of food or a meal to its members and their guests in accordance with the
172 provisions of this article: *Provided*, That a licensed private wine bed and breakfast, private wine
173 restaurant, private wine spa, or a private club may permit a person over 21 years of age to
174 purchase wine, consume wine, and recork or reseal, using a tamper resistant cork or seal, up to
175 two separate bottles of unconsumed wine in conjunction with the serving of food or a meal to its
176 members and their guests in accordance with the provisions of this article and in accordance with
177 rules promulgated by the commissioner for the purpose of consumption of the wine off premises:
178 *Provided, however*, That a licensed private wine restaurant or a private club may offer for sale, for
179 consumption off the premises, sealed bottles of wine to its customers provided that no more than
180 one bottle is sold per each person over 21 years of age, as verified by the private wine restaurant
181 or private club, for consumption off the premises. The licensees may keep and maintain on their
182 premises a supply of wine in quantities appropriate for the conduct of operations thereof. Any sale
183 of wine is subject to all restrictions set forth in §60-8-20 of this code. A private wine restaurant may

184 also be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.*
185 of this code.

186 (k) With respect to subsections (h), (i), (j), (o), and (p) of this section, the commissioner
187 shall propose rules for promulgation in accordance with §29A-1-1 *et seq.* of this code, including,
188 but not limited to, the form of the applications and the suitability of both the applicant and location
189 of the licensed premises.

190 (l) The commissioner shall propose rules for promulgation in accordance with the
191 provisions of §29A-1-1 *et seq.* of this code to allow restaurants to serve wine with meals and to sell
192 wine by the bottle for off-premises consumption as provided in subsection (j) of this section. Each
193 licensed restaurant shall be charged an additional \$100 per year fee.

194 (m) The commissioner shall establish guidelines to permit wines to be sold in all stores
195 licensed for retail sales.

196 (n) Wineries and farm wineries may advertise off premises as provided in §17-22-7 of this
197 code.

198 (o) A wine specialty shop under this article may also hold a wine sampling license
199 authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine
200 specialty shop location during regular hours of business. The wine specialty shop may serve up to
201 three complimentary samples of wine, consisting of no more than two fluid ounces each, to any
202 one consumer ~~in one~~ per day. Persons serving the complimentary samples shall be 21 years of
203 age or older and an authorized representative of the licensed wine specialty shop, winery, farm
204 winery, or a representative of a distributor or registered supplier. Distributor and supplier
205 representatives attending wine sampling events shall register with the commissioner. No licensee,
206 employee, or representative may furnish, give, sell, or serve complimentary samples of wine to
207 any person less than 21 years of age or to a person who is physically incapacitated due to the
208 consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and
209 secure permission from the commissioner for all wine sampling events 30 days prior to the event.

210 Wine sampling events may not exceed six hours per calendar day. Licensees shall purchase all
211 wines used during these events from a licensed farm winery or a licensed distributor.

212 (p) The commissioner may issue special one-day licenses to duly organized, nonprofit
213 corporations and associations allowing the sale and serving of wine, and may, if applicable, also
214 allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only,
215 when raising money for athletic, charitable, educational, or religious purposes. "Auction or
216 auctioning", for the purposes of this subsection, means any silent, physical act, or verbal bid
217 auction, whether or not the auction requires in-presence bidding or online Internet-based
218 electronic bidding through a secure application or website, but shall not include any action in
219 violation of §47-20-10, §47-20-11, or §61-10-1 *et seq.* of this code. The license application shall
220 contain information required by the commissioner and shall be submitted to the commissioner at
221 least 30 days prior to the event. Accompanying the license application, the applicant shall submit a
222 signed and notarized statement that at least 80 percent of the net proceeds from the charitable
223 event will be donated directly to the nonprofit corporation or organization. Wines used during these
224 events may be donated by, or purchased from, a licensed retailer, a distributor, winery, or a farm
225 winery. A licensed winery or farm winery which is authorized in writing by a representative of the
226 duly organized, nonprofit corporation or association which has obtained the one-day license; is in
227 good standing with the state; and obtains the commissioner's approval prior to the one-day license
228 event may, in conjunction with the one-day licensee, exhibit, conduct complimentary tastings, or
229 sell samples not to exceed three, two-fluid ounce tastings or samples per patron, sell wine by the
230 glass or by the bottle, when consumed by the glass, for consumption on the premises during the
231 operation of the one-day license event; and may sell certain sealed wine bottles manufactured by
232 the licensed winery or farm winery for off-premises consumption: *Provided*, That for a licensed
233 winery or farm winery at a licensed one-day event, the tastings, samples, on-premises sales, and
234 off-premises sales shall occur under the hours of operation permitted by this article, except on
235 Sunday, tastings, samples, on-premises sales, and off-premises sales are unlawful between the

236 hours of 2:00 a.m. and 6:00 a.m., from the one-day licensee's submitted floor plan for the event
237 subject to the requirements in the code and rules. Under no circumstances may the provisions of
238 §60-8-20(c) or §60-8-20(f) of this code be waived nor may any exception be granted with respect
239 to those subsections.

240 (q)(1) In addition to the authorization granted to licensed wineries and farm wineries in
241 subsections (h) and (p) of this section, an unlicensed winery, regardless of its designation in
242 another state, ~~but~~ that is duly licensed in its domicile state, may pay a \$150 nonrefundable and
243 ~~nonprorated~~ non-prorated fee and submit an application for temporary licensure on a one-day
244 basis for temporary sampling and sale of wine in sealed containers for off-premises consumption
245 at a special one-day license nonprofit event.

246 (2) The application shall include, but is not limited to, the person or entity's name, address,
247 taxpayer identification number, and location; a copy of its licensure in its domicile state; a signed
248 and notarized verification that it produces 50,000 gallons or less of wine per year; a signed and
249 notarized verification that it is in good standing with its domicile state; copies of its federal
250 certificate of label approvals and certified lab alcohol analysis for the wines it desires to temporarily
251 provide samples and temporarily sell wine in sealed containers for off-premises consumption at a
252 special one-day license for a nonprofit event issued under subsection (p) of this section; and any
253 other information as the commissioner may reasonably require.

254 (3) The applicant winery shall include a list of all wines proposed to be temporarily sampled
255 and temporarily sold by the glass or bottle, when consumed by the glass, for on-premises
256 consumption or in sealed containers for off-premises consumption at a special one-day license for
257 a nonprofit event so that the wines may be reviewed in the interest of public health and safety.
258 Once approved, the submitted wine list creates a temporary wine brand registration for up to two
259 special one-day licenses for a nonprofit event for no additional fee.

260 (4) An applicant winery that receives this temporary special one-day license for a nonprofit
261 event shall provide the commissioner a signed and notarized written agreement acknowledging

262 that the applicant winery understands its responsibility to pay all municipal, local, and sales taxes
263 applicable to the sale of wine in West Virginia.

264 (5) An application must be submitted per special one-day license for a nonprofit event the
265 applicant winery desires to attend, and the license fee shall cover up to two special one-day
266 license for nonprofit events before an additional fee ~~would be~~ is required. In no circumstance
267 would the winery be permitted to attend more than four special one-day licensed events. Any
268 applicant or unlicensed winery desiring to attend more than four special one-day license for
269 nonprofit events per year or otherwise operate in West Virginia would need to seek appropriate
270 licensure as a winery or a farm winery in this state.

271 (6) Notwithstanding the provisions of this article and requirements for licensure, wine
272 brand registration, payment of wine liter tax, and the winery's appointment of suppliers and
273 distributors, this temporary special one-day license for a nonprofit event, once granted, permits a
274 winery to operate in this limited capacity only at the approved specific, special one-day license for
275 a nonprofit event subject to the limitations contained in this section.

276 (7) The applicant winery shall also apply for and receive a transportation permit to legally
277 transport wine in the state per §60-6-12 of this code.

278 (8) The applicant winery is subject to all applicable violations and/or penalties under this
279 article and the legislative rules that are not otherwise excepted by this subsection: *Provided*, That
280 the commissioner may by rule or order provide for certain waivers or exceptions with respect to the
281 provisions, rules, or orders required by the circumstances of each festival or fair. The
282 commissioner may revoke or suspend any license issued pursuant to this article, prior to any
283 notice or hearing.

284 (r) The commissioner may issue special licenses to heritage fairs and festivals allowing the
285 sale, serving, and sampling of wine from a licensed farm winery. The license application shall
286 contain information required by the commissioner and shall be submitted to the commissioner at
287 least 30 days prior to the event. Wines used during these events may be donated by or purchased

288 from a licensed farm winery. Under no circumstances may the provision of §60-8-20(c) of this code
289 be waived nor may any exception be granted with respect thereto. The commissioner shall
290 propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to
291 implement the provisions of this subsection.

292 (s)(1) The commissioner may issue a special license for the retail sale of wine in a college
293 stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and
294 serve wine for consumption in a college stadium. For the purpose of this subsection, “college
295 stadium” means a facility constructed primarily for the use of a Division I, II, or III college that is a
296 member of the National Collegiate Athletic Association, or its successor, and used as a football,
297 basketball, baseball, soccer, or other Division I, II, or III sports stadium. A special license issued
298 pursuant to this subsection shall be for a term beginning on the date of its issuance and ending on
299 the next following June 30, and its fee is \$250 regardless of the length of the term of the license.
300 The application for the special license shall contain information required by the commissioner and
301 must be submitted to the commissioner at least 30 days prior to the first day when wine is to be
302 sold. The special license may be issued in the name of the National Collegiate Athletic Association
303 Division I, II, or III college or university or the name of the primary food and beverage vendor under
304 contract with that college or university. All sales must take place within the confines of the college
305 stadium: *Provided*, That the exterior of the area where wine sales may occur shall be surrounded
306 by a fence or other barrier prohibiting entry except upon the college or university’s express
307 permission, and under the conditions and restrictions established by the college or university, so
308 that the wine sales area is closed to free and unrestricted entry by the general public.

309 (2) A license issued under this subsection and the licensee are subject to the other
310 requirements of this article and the rules and orders of the commissioner relating to the special
311 license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions
312 to those rules or orders as required by the circumstances of each college stadium. The
313 commissioner may revoke or immediately suspend any license issued pursuant to this section

314 prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided,*
315 *however,* That §60-8-20(c) or §60-8-20(d) of this code may not be waived, nor shall any exception
316 be granted concerning those subsections.

317 (3) The commissioner may propose legislative rules for promulgation in accordance with
318 §29A-3-1 *et seq.* of this code to implement this subsection.