WEST VIRGINIA CODE CHAPTER 60 ARTICLE 8A

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§60-8A-1. Definition of Hard Cider.

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

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§60-8A-2. Applicability of other laws and licenses.

(a) Except as stated in this article, all wine licenses and other wine requirements set forth in §60-8-1 *et seq*., §60-4-3b, and §60-6-2, of this code, shall apply to the manufacture, distribution, or sale of hard cider. Any person or licensee legally authorized to manufacture, distribute, or sell wine may manufacture, distribute, or sell hard cider in the same manner and to the same persons, and subject to the same limitations and conditions, as such license or legal right authorizes him or her to manufacture, distribute, or sell wine. No additional wine license fees shall be charged for the privilege of manufacturing, distributing, or selling hard cider.

(b) Except as stated in this article, all hard cider distributors are bound by all wine distribution requirements set forth in §60-8-1 *et seq*., §60-4-3b, and §60-6-2, of this code which shall apply to distribution of hard cider. Any person or licensee legally authorized to distribute hard cider may distribute hard cider in the same manner and to the same persons, and subject to the same limitations and conditions, as a license or legal right would authorize him or her to distribute wine. An additional hard cider license fee shall not be charged for the privilege of distributing hard cider.

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§60-8A-3. Taxation; reporting; deposits into Agriculture Development Fund; penalties for failure to file returns; application of state tax law; rulemaking authority.

(a) There is hereby levied and imposed on all hard cider sold on and after July 1, 2021, by wineries, farm wineries, and suppliers to distributors, and including all hard cider sold and sent to persons 21 years of age or older who reside in West Virginia from direct shippers, a tax of 22.6 cents per gallon, in like ratio for any partial gallon or other unit of measure: *Provided*, That wineries, farm wineries, and suppliers eligible for federal tax credits in 26 U.S.C. 5041(c)(1) on hard cider are eligible for the credits in this state against the tax on hard cider. In the case of a person who produces not more than 250,000 wine gallons of hard cider during the calendar year, there shall be allowed as a credit against any tax imposed by this section of 5.6 cents per wine gallon on the first 100,000 wine gallons of hard cider which are removed during such year for consumption or sale and which have been produced at qualified facilities in the United States. That credit shall be reduced by one percent for each 1,000 wine gallons of hard cider produced in excess of 150,000 wine gallons of hard cider during the calendar year. For the purposes of this section, the term "wine gallon" means a United States gallon of liquid measure equivalent to the volume of 231 cubic inches. On lesser quantities, the tax shall be paid proportionately (fractions of less than one-tenth gallon being converted to the nearest one-tenth gallon, and five-hundredths gallon being converted to the next full one-tenth gallon). Hard cider is exempt from the liter tax established under §60-8-4 of this code.

(b) The Tax Commissioner shall deposit, at least quarterly, after deducting the amount of any refunds lawfully paid and any administrative fees authorized by this code, the taxes for the hard cider, pursuant to this section, in the Agriculture Development Fund established by §19-2-12 of this code.

(c) Before the 16th day of each month thereafter, every winery, farm winery, supplier, distributor, and direct shipper shall make a written report under oath to the Tax Commissioner and the commissioner showing the identity of the purchasing person, the quantity, label, and alcoholic content of hard cider sold by the winery, farm winery, and supplier to West Virginia distributors or the direct shipper to persons 21 years of age or older who reside in West Virginia during the preceding month and at the same time shall pay the tax imposed by this article on the hard cider sold to the distributor or to persons 21 years of age or older who reside in West Virginia during the preceding month to the Tax Commissioner.

The reports shall contain other information and be in the form required by the Tax Commissioner. For purposes of this article, the reports required by this section shall be considered tax returns covered by the provisions of §11-10-1 *et seq*. of this code. Failure to timely file the tax returns within five calendar days of the 16th day of each month subjects a winery, farm winery, supplier, distributor, and direct shipper to penalties under §60-8-18 of this code.

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(d) No hard cider imported, sold, or distributed in this state or sold and shipped to this state by a direct shipper shall be subject to more than one per-gallon tax on hard cider.

(e) *Administrative procedures*. — Each and every provision of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1 *et seq*. of this code, applies to the taxes imposed pursuant to this section, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes imposed by this section and were set forth in extenso in this article.

(f) *Criminal penalties*. — Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in §11-9-1 *et seq*. of this code applies to the taxes imposed pursuant to this section with like effect as if that act were applicable only to the taxes imposed pursuant to this article and were set forth in extenso in this article.

(g) The Tax Commissioner may propose legislative rules for legislative approval, pursuant to §29A-3-1 *et seq*. of this code, to implement this section.

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§60-8A-4. Fruit sources; phase in; applications.

(a) On and after July 1, 2021, pursuant to §60-3-25 of this code, any farm winery attempting to manufacture hard cider may apply to the Agriculture Commissioner with a copy to the commissioner showing its inability to obtain 75 percent of the apples, pears, peaches, honey, or other fruits necessary to produce its hard cider from within this state. The Agriculture Commissioner may issue a permit to the applicant to import such fruit, honey, or fruit juice concentrate in an amount determined necessary by the Agriculture Commissioner to allow the farm winery to produce hard cider within the percentage established by §60-1-5a of this code.

(b) The burden of proof is on the applicant to show that apples, pears, peaches, honey, or other fruits, of the type normally used by the licensee are not available from any other source within the State of West Virginia. The commissioner shall not consider an application for a permit under this section unless it is accompanied by written findings by the Agriculture Commissioner in support of the application.

(c) Notwithstanding any provision in §60-3-25 of this code, to the contrary, any permit issued under this section is effective for a period of up to three years: *Provided*, That the applicant files an annual statement of necessity, supported by written findings from the Agriculture Commissioner, with the commissioner. After the five-year permit issued pursuant to this section has expired, the applicant shall submit any subsequent application for a permit pursuant to §60-3-25 of this code.

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

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

(b) Samples. — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer samples of hard cider manufactured at the winery's or farm winery's principal place of business or manufacturing facility located in the State of West Virginia. The samples may be no greater than three fluid ounces per sample per patron, and a sampling shall not exceed six complimentary three fluid ounce samples per patron per day. A licensed winery or farm winery providing samples shall provide food, which may be pre-packaged food not requiring kitchen preparation, items to the patron consuming the samples; and prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of age or older and that the patron is not noticeably or visibly intoxicated. The winery or farm winery is subject to the hours of operation set forth in §60-8-34 of this code.

(c) Retail sales. — Every licensed winery or farm winery under this section shall comply with all the provisions applicable to wine retailers when conducting sales of hard cider and is subject to all applicable requirements and penalties. A winery or a farm winery holding a private wine restaurant license or private manufacturer club license may offer for sale and service hard cider by the drink or glass or cider by the bottle when consumed by the glass on the property of the winery or farm winery. In the interest of promoting tourism throughout the state, every licensed winery or farm winery manufacturing cider in this state is authorized, with a limited off-site retail privilege at private fair and festivals, for off-premises consumption sales of the winery or farm winery's sealed hard cider. At least five days prior to an approved private fair and festival, an authorized winery or farm winery shall provide a copy of a written agreement to sell only hard cider manufactured by the licensed winery or farm winery at the private fair and festival's licensed premises. If approved, an authorized winery or farm winery may conduct on-premises and off-premises consumption sales of their hard cider from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved wineries and farm wineries' on-premises and off-premises consumption sales of hard cider shall comply with all retail requirements in §60-8-1

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et seq. of this code and §60-8A-1 *et seq*. of this code, and specifically with respect to all markups, taxes, and fees. Additionally, an authorized winery or farm winery may provide, sell, and serve hard cider samples in the amounts set forth in subsection(b) of this section, hard cider by the glass or drink, or hard cider by the bottle when consumed by the glass of its hard cider for on-premises consumption to patrons who are 21 years of age and older and who are not intoxicated.

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

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

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

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

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§60-8A-6. Rule-making authorization.

The West Virginia Alcoholic Beverage Control Commissioner may propose legislative rules for legislative approval, pursuant to §29A-3-1 *et seq*. of this code, to implement this article.

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