House Bill 4159

By Delegates Criss, Espinosa, Ellington, Barrett, Bates, Graves, Sponaugle, Williams, Linville, Cowles and Hardy

[Passed March 7, 2020; in effect ninety days from passage.]
WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

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BY DELEGATES CRISS, ESPINOSA, ELLINGTON, BARRETT,
BATES, GRAVES, SPONAUGLE, WILLIAMS, LINVILLE,
COWLES AND HARDY

[Passed March 7, 2020; in effect ninety days from passage.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections designated §19-2-12 and §19-2-13; to amend and reenact §60-1-5a of said code; to amend and reenact §60-8-2, §60-8-3, §60-8-4, §60-8-18, and §60-8-29 of said code; and to add a new article to said code designated §60-8A-1, §60-8A-2, §60-8A-3, §60-8A-4, §60-8A-5, §60-8A-6, and §60-8A-7; all relating to the manufacture and sale of wine and hard cider; all relating to the manufacture and sale of hard cider and wine; establishing the Agriculture Development Fund; establishing permitted expenditures from the fund; creating a new program to develop hard cider; providing for definitions; clarifying various aspects of wine, specifically the alcohol by volume percentage for table wine, wine, and fortified wine; adding the definition of "nonfortified dessert wine"; clarifying penalties for failure to meet requirements; replacing bond requirements that secure the payment of taxes by distributors, suppliers, certain wineries, and certain farm wineries, who are acting as either suppliers or distributors in a limited capacity, with an affidavit; providing penalties for failure to pay taxes and maintain good standing with the state; providing that there is no separate license required to manufacture and sell hard cider under certain conditions; providing for a hard cider distributor’s license; providing for hard cider exemptions to the wine liter tax; establishing a hard cider gallon tax; providing for applicability of other laws; requiring regular reports to the Tax Commissioner; providing for applications to import products necessary to manufacture hard cider under certain conditions; providing for hard cider sales for consumption; providing for complementary samples to be given; establishing requirements for complementary samples; permitting the sale of growlers; establishing growler labeling requirements; establishing growler sanitation requirements; providing for fees for the privilege to sell growlers; providing for rule-making authority; providing certain limited authority to unlicensed wineries not currently licensed or located in West Virginia; temporarily authorizing limited sampling and temporarily authorizing the
limited sale of wine for off-premises consumption at certain fairs and festivals and at
certain one-day special licensed nonprofit events in a very limited capacity.

Be it enacted by the Legislature of West Virginia:

CHAPTER 19. AGRICULTURE.

ARTICLE 2. MARKETING AGRICULTURAL PRODUCTS.

§19-2-12. Agriculture Development Fund; administration; purpose; funding.

(a) There is hereby created in the State Treasury a special revenue account to be known
as the Agriculture Development Fund. The fund shall be administered by the Department of
Agriculture. The fund shall consist of all moneys deposited into the fund pursuant to §60-8A-3 of
this code; any moneys that may be designated for deposit in this fund by an act of the Legislature;
any moneys appropriated and designated for the fund by the Legislature; any moneys able to be
transferred into the fund by authority of the commissioner from other funds; and gifts, donations,
and interest or other returns earned from investment of the fund.

(b) Expenditures from the fund shall be for the purpose of fostering and supporting the
development of agricultural sectors, such as hard cider, within the state, and are not authorized
from collections, but are to be made only in accordance with appropriation by the Legislature and
in accordance with the provisions of §12-3-1 et seq. of this code and upon the fulfillment of the
provisions set forth in §11B-2-1 et seq. of this code. Any balance, including accrued interest and
other returns, remaining in the fund at the end of each fiscal year shall not revert to the General
Revenue Fund, but shall remain in the fund and be expended as provided by this section.

§19-2-13. Hard cider development program; purpose; funding.

The commissioner shall establish a program to foster the development and growth of the
hard cider industry in the state. The purpose of the program shall be to assist in the development
of fruit inputs necessary for the production of hard cider in the state. The program shall be funded
using moneys deposited within the Agriculture Development Fund created pursuant to §19-2-12
of this code.
CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5a. Farm wineries defined.

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

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

ARTICLE 8. SALE OF WINES.

§60-8-2. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:
“Commissioner” or “commission” means the West Virginia Alcohol Beverage Control Commissioner.

“Distributor” means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute wine to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops and that sells or distributes nonfortified dessert wine, port, sherry and Madeira wines to wine specialty shops, private wine restaurants, private clubs, or retailers under authority of this article and maintains a warehouse in this state for the distribution of wine. For the purpose of a distributor only, the term “person” means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44-10-1 et seq. of this code.

“Fortified wine” means any wine to which brandy or other alcohol has been added where the alcohol content by volume does not exceed 24 percent, and shall include nonfortified dessert wines where the alcohol content by volume is greater than 17 percent and does not exceed 24 percent.

“Grocery store” means any retail establishment, commonly known as a grocery store, supermarket, delicatessen, caterer, or party supply store, where food, food products, and supplies for the table are sold for consumption off the premises with average monthly sales (exclusive of sales of wine) of not less than $500 and an average monthly inventory (exclusive of inventory of wine) of not less than $3,000. The term “grocery store” shall also include and mean a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products, and supplies for the table for consumption off the premises with average monthly sales.
with respect to such separate or segregated portion (exclusive of sales of wine) of not less than
$3,000 and an average monthly inventory (exclusive of inventory of wine) of not less than $3,000.

“Hard Cider” means a type of wine that is derived primarily from the fermentation of apples,
pears, peaches, honey, or another fruit, or from apple, pear, peach, or another 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, labelled, offered for sale, or sold, as hard cider or cider containing alcohol, and
not as wine, wine product, or as a substitute for wine.

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

“Licensee” means the holder of a license granted under the provisions of this article.

“Nonfortified dessert wine” means a wine that is a dessert wine to which brandy or other
alcohol has not been added, and which has an alcohol content by volume of at least 14.1 percent
and less than or equal to 17 percent.

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

"Private wine restaurant" means a restaurant which: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which has as its principal purpose the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when such sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public. Such private clubs that meet the private wine restaurant requirements numbered (1), (2), and (3) in this definition shall be considered private wine restaurants.

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

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

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

“Table wine” means a wine with an alcohol content by volume between 0.5 percent and
14 percent.

“Tax” includes within its meaning interest, additions to tax, and penalties.

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

“Varietal wine” means any wine labeled according to the grape variety from which such
wine is made.

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

“Wine” means any alcoholic beverage obtained by the natural fermentation of the natural
content of grapes, other fruits, or honey or other agricultural products containing sugar and to
which no alcohol has been added and shall include table wine, hard cider, nonfortified dessert
wine, wine coolers, and other similar wine-based beverages. Fortified wine and any product
defined as or embraced within the definition of nonintoxicating beer under the provisions of §11-
16-1 et seq., of this code are excluded from this definition of wine.
"Wine specialty shop" means a retailer who shall deal principally in the sale of table wine, nonfortified dessert wines, wine accessories, and food or foodstuffs normally associated with wine and: (1) Who shall maintain a representative number of such wines for sale in his or her inventory which are designated by label as varietal wine, vintage, generic, and/or according to region of production and the inventory shall contain not less than 15 percent vintage or vintage-dated wine by actual bottle count; and (2) who, any other provisions of this code to the contrary notwithstanding, may maintain an inventory of port, sherry, and Madeira wines having an alcoholic content of not more than 22 percent alcohol by volume and which have been matured in wooden barrels or casks. All wine available for sale is for off-premises consumption except where wine tasting or wine sampling is separately authorized by the code.

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

(a) No person may engage in business in the capacity of a winery, farm winery, supplier, distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine spa, or wine specialty shop without first obtaining a license from the commissioner, nor shall a person continue to engage in any activity after his or her license has expired, been suspended, or revoked. No person may be licensed simultaneously as a distributor and a retailer. No person, except for a winery or farm winery, may be licensed simultaneously as a supplier and a retailer. No person may be licensed simultaneously as a supplier and a private wine bed and breakfast, private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a distributor and a private wine bed and breakfast, a private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a retailer and a private wine bed and breakfast, a private wine restaurant, or a private wine spa. Any person who is licensed to engage in any business concerning the manufacture, sale, or distribution of wine may also engage in the manufacture, sale, or distribution of hard cider without obtaining a separate hard cider license.

(b) The commissioner shall collect an annual fee for licenses issued under this article as follows:
(1) One hundred fifty dollars per year for a supplier’s license;

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

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

(4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any other licensing fees paid by a winery or retailer holding a license. Except for the amount of the license fee and the restriction to sales of winery or farm winery wines, a winery, or farm winery acting as a wine specialty shop retailer is subject to all other provisions of this article which are applicable to a wine specialty shop retailer as defined in §60-8-2 of this code;

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

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

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

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

(9) One hundred fifty dollars per year for a wine sampling license issued for a wine specialty shop under subsection (n) of this section;
(10) No fee shall be charged for a special one-day license under subsection (p) of this section or for a heritage fair and festival license under subsection (q) of this section;

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

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

(13) Two hundred fifty dollars per year for a hard cider distributor’s license and each separate warehouse or other facility from which a distributor sells, transfers, or delivers hard cider shall be separately licensed and there shall be collected with respect to each location the annual license fee of $250 as provided in this subdivision.

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

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

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

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

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

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

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

(3) A licensed winery or a farm winery, which has the festival or fair licensee’s written
authorization and approval from the commissioner, may, in addition to or in conjunction with the
festival and fair licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed
three, two-fluid ounce, tastings or samples per patron, for consumption on the premises during
the operation of a festival or fair only; and may sell wine for off-premises consumption only:
Provided, That for licensed wineries or farm wineries at a licensed festival or fair the tastings,
samples and off-premises sales shall occur under the hours of operation as required in this article,
except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of 2:00 a.m. and 10:00 a.m.

(4) A festival or fair license may be issued to a “wine club” as defined in this subdivision for a license fee of $250. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the festival or fair and the words “wine club”. The license shall be issued in the name of the wine club. A licensee may not commence the sale of wine as provided in this subdivision until the wine club has at least 50 dues-paying members who have been enrolled, and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this subdivision may sell wine only to its members, and in portions not to exceed eight ounces per serving. The sales shall take place on premises or in an area cordoned or segregated so as to be closed to the general public, and the general public shall not be admitted to the premises or area. A wine club licensee under the provisions of this subdivision may serve complimentary samples of wine in moderate quantities for tasting. A wine club may not make wine purchases from a direct shipper where the wine may be consumed on the licensed premises of any Class A private wine retail license or private club. A wine club which violates the provisions of this subdivision is subject to the penalties in this article.

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

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

(7) An unlicensed winery temporarily licensed and meeting the requirements set forth in subsection (q) of this section may conduct the same sampling and sales set forth in subsection (q) of this section at a licensed fair and festival upon approval of the licensee holding the fair and festival license and temporary and limited licensure by the commissioner. An unlicensed winery shall be subject to the same limits, fees, requirements, restrictions and penalties set forth in subsection (q) of this section: Provided, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders as the circumstances of each festival or fair may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: Provided, however, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted with respect to those subsections.

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

(2) A license issued under this subsection and the licensee holding the license are subject to all other provisions of this article and the rules and orders of the commissioner relating to the special license: Provided, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders as the circumstances of each professional baseball stadium may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: Provided, however, That under no circumstances may §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted concerning those subsections.

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

(j) A license to sell wine granted to a private wine bed and breakfast, private wine restaurant, private wine spa, or a private club under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when the sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article: Provided, That a licensed private wine bed and breakfast, private wine restaurant, private wine spa, or a private club may permit a person over 21 years of age to purchase wine, consume wine, and recork or reseal, using a tamper resistant cork or seal, up to two separate bottles of unconsumed wine in conjunction with the serving of food or a meal to its members and their guests.
members and their guests in accordance with the provisions of this article and in accordance with
rules promulgated by the commissioner for the purpose of consumption of said wine off premises:

Provided, however, That for this article, food or a meal provided by the private licensee means
that the total food purchase, excluding beverage purchases, taxes, gratuity, or other fees is at
least $15: Provided further, That a licensed private wine restaurant or a private club may offer for
sale, for consumption off the premises, sealed bottles of wine to its customers provided that no
more than one bottle is sold per each person over 21 years of age, as verified by the private wine
restaurant or private club, for consumption off the premises. Such licensees are authorized to
keep and maintain on their premises a supply of wine in quantities appropriate for the conduct of
operations thereof. Any sale of wine is subject to all restrictions set forth in §60-8-20 of this code.

A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer
as provided by §11-16-1 et seq. of this code.

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

(l) The commissioner shall propose rules for promulgation in accordance with the
provisions of §29A-1-1 et seq. of this code to allow restaurants to serve wine with meals, and to
sell wine by the bottle for off-premises consumption as provided in subsection (j) of this section.

Each licensed restaurant shall be charged an additional $100 per year fee.

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

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

(o) A wine specialty shop under this article may also hold a wine sampling license
authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine
specialty shop location during regular hours of business. The wine specialty shop may serve up
to three complimentary samples of wine, consisting of no more than two fluid ounces each, to any
one consumer in one day. Persons serving the complimentary samples must be 21 years of age
and an authorized representative of the licensed wine specialty shop, winery, farm winery, or a
representative of a distributor or registered supplier. Distributor and supplier representatives
attending wine sampling events must be registered with the commissioner. No licensee,
employee, or representative may furnish, give, sell, or serve complimentary samples of wine to
any person less than 21 years of age or to a person who is physically incapacitated due to the
consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and
secure permission from the commissioner for all wine sampling events one month prior to the
event. Wine sampling events may not exceed six hours per calendar day. Licensees must
purchase all wines used during these events from a licensed farm winery or a licensed distributor.

(p) The commissioner may issue special one-day licenses to duly organized, nonprofit
corporations and associations allowing the sale and serving of wine, and may, if applicable, also
allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only,
when raising money for athletic, charitable, educational, or religious purposes. “Auction or
auctioning”, for the purposes of this subsection, means any silent, physical act, or verbal bid
auction, whether or not such auction requires in-presence bidding or online Internet-based
electronic bidding through a secure application or website, but shall not include any action in
violation of §47-20-10, §47-20-11, or §61-10-1 et seq. of this code. The license application shall
contain information required by the commissioner and shall be submitted to the commissioner at
least 30 days prior to the event. Wines used during these events may be donated by, or purchased
from, a licensed retailer, a distributor, winery, or a farm winery. A licensed winery or farm winery
which is authorized in writing by a representative of the duly organized, nonprofit corporation and
association which has obtained the one-day license; is in good standing with the state; and obtains
the commissioner’s approval prior to the one-day license event may, in conjunction with the one-
day licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed of three, two-
fluid ounce tastings or samples per patron, for consumption on the premises during the operation
of the one-day license event; and may sell certain sealed wine bottles manufactured by the
licensed winery or farm winery for off-premises consumption: Provided, That for a licensed winery
or farm winery at a licensed one-day event, the tastings, samples and off-premises sales shall
occur under the hours of operation as required in this article, except on Sunday, tastings, samples,
and off-premises sales are unlawful between the hours of 2:00 a.m. and 10:00 a.m., from the one-
day licensee’s submitted floor plan for the event subject to the requirements in the code and rules.
Under no circumstances may the provisions of §60-8-20(c) or §60-8-20(f) of this code be waived
nor may any exception be granted with respect to those subsections. No more than six licenses
may be issued to any single licensee during any calendar year.

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

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

(3) The applicant winery shall include a list of all wines proposed to be temporarily sampled and temporarily sold in sealed containers at a special one-day license for a nonprofit event so that the wines may be reviewed in the interest of public health and safety. Once approved, the submitted wine list will create a temporary wine brand registration for up to two special one-day license for a nonprofit event for no additional fee.

(4) An applicant winery that receives this temporary special one-day license for a nonprofit event will provide a signed and notarized agreement where the applicant winery agrees to pay all municipal, local, and sales taxes applicable to the sale of wine in West Virginia.

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

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

(7) The applicant winery will need to further apply for and receive a transportation permit in order to legally transport wine in the state per §60-6-12 of this code.

(8) The applicant winery is subject to all applicable violations and/or penalties under this article and the legislative rules that is not otherwise excepted by this sub-section: Provided, That
the commissioner may by rule or order provide for certain waivers or exceptions with respect to
the provisions, rules, or orders as the circumstances of each festival or fair may require, including,
without limitation, the right to revoke or suspend any license issued pursuant to this section prior
to any notice or hearing.

(r) The commissioner may issue special licenses to heritage fairs and festivals allowing
the sale, serving, and sampling of wine from a licensed farm winery. The license application shall
contain information required by the commissioner and shall be submitted to the commissioner at
least 30 days prior to the event. Wines used during these events may be donated by or purchased
from a licensed farm winery. Under no circumstances may the provision of §60-8-20(c) of this
code be waived nor may any exception be granted with respect thereto. The commissioner shall
propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code to
implement the provisions of this subsection.

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

(2) A license issued under this subsection and the licensee are subject to the other requirements of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders as the circumstances of each the college stadium may require, including, without limitation, the right to revoke or immediately suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided, however*, That §60-8-20(c) or §60-8-20(d) of this code may not be waived, nor shall any exception be granted concerning those subsections.

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

§60-8-4. Liter tax.

There is hereby levied and imposed on all wine sold after July 1, 2007, by suppliers to distributors, and including all wine sold and sent to West Virginia adult residents from direct shippers, except wine sold to the commissioner, a tax of twenty-six and four hundred six-thousandths cents per liter. Effective July 1, 2020, hard cider is excepted from this per liter tax and is taxed pursuant to §60-8A-3 of this code.

Before the 16th day of each month thereafter, every supplier, distributor and direct shipper shall make a written report under oath to the Tax Commissioner and the commissioner showing the identity of the purchaser, the quantity, label and alcoholic content of wine sold by the supplier to West Virginia distributors or the direct shipper to West Virginia adult residents during the
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preceding month and at the same time shall pay the tax imposed by this article on the wine sold
to the distributor or the West Virginia adult residents during the preceding month to the Tax
Commissioner.

The reports shall contain other information and be in the form the Tax Commissioner may
require. 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 will also subject a supplier,
distributor and direct shipper to penalties under §60-8-18 of this code.

No wine 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 liter tax.

§60-8-18. Revocation, suspension, and other sanctions which may be imposed by the
commissioner upon the licensee; procedure for appealing any final order of the
commissioner which revokes, suspends, sanctions, or denies the issuance or renewal of any license issued under this article.

(a) The commissioner may on his or her own motion, or shall on the sworn complaint of
any person, conduct an investigation to determine if any provisions of this article or any rule
promulgated or any order issued by the commissioner has been violated by any licensee. After
investigation, the commissioner may impose penalties and sanctions as set forth below.

(1) If the commissioner finds that the licensee has violated any provision of this article or
any rule promulgated or order issued by the commissioner, or if the commissioner finds the
existence of any ground on which a license could have been refused, if the licensee were then
applying for a license, the commissioner may:

(A) Revoke the licensee’s license;

(B) Suspend the licensee’s license for a period determined by the commissioner not to
exceed 12 months; or

(C) Place the licensee on probation for a period not to exceed 12 months; and
(D) Impose a monetary penalty not to exceed $1,000 for each violation where revocation is not imposed.

(2) If the commissioner finds that a licensee has willfully violated any provision of this article or any rule promulgated or any order issued by the commissioner, the commissioner shall revoke the licensee's license.

(b) Whenever the commissioner refuses to issue a license, or suspends or revokes a license, places a licensee on probation, or imposes a monetary penalty, he or she shall enter an order to that effect and cause a copy of the order to be served in person or by certified mail, return receipt requested, on the licensee or applicant.

(c) An applicant or licensee, as the case may be, adversely affected by the order has a right to a hearing before the commissioner if a written demand for hearing is served upon the commissioner within 10 days following the receipt of the commissioner's order by the applicant or licensee. Timely service of a demand for a hearing upon the commissioner operates to suspend the execution of the order with respect to which a hearing has been demanded, except an order suspending a license under the provisions of §60-8-29 of this code. The person demanding a hearing shall give security for the cost of the hearing in a form and amount as the commissioner may reasonably require. If the person demanding the hearing does not substantially prevail in the hearing or upon judicial review thereof as provided in subsections (f) and (g) of this section, then the costs of the hearing shall be assessed against him or her by the commissioner and may be collected by an action at law or other proper remedy.

(d) Upon receipt of a timely served written demand for a hearing, the commissioner shall immediately set a date for the hearing and notify the person demanding the hearing of the date, time, and place of the hearing, which shall be held within 30 days after receipt of the demand. At the hearing the commissioner shall hear evidence and thereafter enter an order supporting by findings of facts, affirming, modifying, or vacating the order. Any such order is final unless vacated or modified upon judicial review thereof.
(e) The hearing and the administrative procedure prior to, during, and following the hearing shall be governed by and in accordance with the provisions of §29A-5-1 et seq. of this code.

(f) Notwithstanding the provisions of §29A-5-4(b) of this code, an applicant or licensee adversely affected by a final order entered following a hearing has the right of judicial review of the order code in the Circuit Court of Kanawha County or the circuit court in the county where the proposed or licensed premises is located and will or does conduct sales: Provided, That in all other respects, such review shall be conducted in the manner provided in chapter 29A of this code. The petition for the review must be filed with the circuit court within 30 days following entry of the final order issued by the commissioner. An applicant or licensee obtaining judicial review is required to pay the costs and fees incident to transcribing, certifying, and transmitting the records pertaining to the matter to circuit court.

(g) The judgment of the circuit court reviewing the order of the commissioner is final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of §29A-6-1 of this code.

(h) Legal counsel and services for the commissioner in all proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his or her assistants and in any proceedings in any circuit court by the prosecuting attorney of that county as well, all without additional compensation.

§60-8-29. Affidavit of compliance required of distributors and suppliers.

Each applicant for a distributor’s license or a supplier’s license shall furnish at the time of application an affidavit of compliance with federal and state laws regarding tied house laws, trade practice requirements, and furnishing things of value requirements set forth in the code and the rules. Further, licensed distributors and suppliers who fail to pay their taxes to the Tax Commissioner or who are not otherwise in good standing with the state and its agencies shall be suspended upon 10 days’ written notice by the commissioner. If the payment of taxes or good standing is not completed in 30 days from the date of suspension of the licensee’s license, then
the licensee’s license shall be revoked pursuant to the requirements of this article as it is a privilege to hold a license.

ARTICLE 8A. MANUFACTURE AND SALE 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, labelled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as wine, wine product, or as a substitute for wine.


(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 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. No additional hard cider license fees shall be charged for the privilege of distributing hard cider.
§60-8A-3. Taxation; reporting; deposits into Agriculture Development Fund; penalties for failure to file returns.

(a) There is hereby levied and imposed on all hard cider sold on and after July 1, 2020, by wineries, farm wineries, and suppliers to distributors, and including all hard cider sold and sent to West Virginia adult residents from direct shippers, a tax of 22 and six-tenths 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) shall be eligible for such credits in this state. Hard cider is exempt from the liter tax established under §60-8-4 of this code.

(b) All taxes for hard cider collected pursuant to this section shall be deposited 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, and supplier, distributor and direct shipper shall make a written report under oath to the Tax Commissioner and the commissioner showing the identity of the purchaser, 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 West Virginia adult residents 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 the West Virginia adult residents during the preceding month to the Tax Commissioner.

The reports shall contain other information and be in the form the Tax Commissioner may require. 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 will also subject a winery, farm winery, supplier, distributor and direct shipper to penalties under §60-8-18 of this code.

(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.

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

(a) On and after July 1, 2020, pursuant to §60-3-25 of this code, any farm winery attempting to manufacture hard cider may submit an application to the Agriculture Commissioner
with a copy to the commissioner showing its inability to obtain from within this state 75 percent of the apples, pears, peaches, honey, or other fruits necessary to produce its hard cider. The Agriculture Commissioner may issue to the applicant a permit to import such fruit, honey, or fruit juice concentrate in an amount deemed necessary by the Agriculture Commissioner to allow such farm winery to produce hard cider within the percentage established by §60-1-5a of this code.

(b) The burden of proof shall be upon 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, and no application for a permit under this section shall be considered by the commissioner unless it is accompanied by written findings by the Agriculture Commissioner in support thereof.

(c) Notwithstanding any provision in §60-3-25 of this code to the contrary, any permit issued under this section shall be effective for a period of up to five 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, any subsequent application for a permit shall be submitted pursuant to §60-3-25 of this code.

§60-8A-5. Winery or farm winery licensee’s authority to manufacture, sell, and provide complimentary 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 of the licensed premises only in approved and registered kegs, bottles, cans, or 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 complimentary samples as permitted in subsection (b)
of this section. “Growler” means a container or jug that is made of glass, ceramic, metal, or other approved material, that may be no larger than 128 fluid ounces in size and must be capable of being securely sealed as approved by the commissioner.

(b) Complimentary 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 only complimentary 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 complimentary samples may be no greater than two fluid ounces per sample per patron, and a sampling shall not exceed six complimentary two-fluid ounce samples per patron per day. A licensed winery or farm winery providing complimentary samples shall provide complimentary food items to the patron consuming the complimentary samples; and prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of age or over and that the patron is not visibly intoxicated.

(c) Retail sales. — Every licensed winery or farm winery under this section shall comply with all the provisions as applicable to wine retailers when conducting sales of hard cider and shall be subject to all applicable requirements and penalties.

(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.

(f) Growler requirements. — A licensed winery or farm winery, if offering growler filling services, must fill a growler and patrons are not permitted to access the secure area or fill a
growler. If offered, a licensed winery or farm winery must sanitize, fill, securely seal, and label any
growler prior to its sale. A licensed winery or farm winery under this section may only offer for
retail sale growlers no larger than 128 fluid ounces of hard cider manufactured by the licensed
winery or farm winery for personal consumption off of the licensed premises and not for resale. A
licensed winery or farm winery under this section may refill a growler subject to the requirements
of this section. A licensed winery or farm winery shall visually inspect any growler before filling or
refilling it. A licensed winery or farm winery may not fill or refill any growler that appears to be
cracked, broken, unsafe or otherwise unfit to serve as a sealed beverage container.

(g) Growler labeling. — A licensed winery or farm winery under this section selling growlers
shall affix a conspicuous label on all sold and securely sealed growlers listing the name of the
licensee selling the growler, the brand of the hard cider in the growler, the alcohol content by
volume of the hard cider in the growler and the date the growler was filled or refilled, and, further,
all labeling on the growler shall be consistent with all federal labeling and warning requirements.

(h) Growler sanitation. — A licensed winery or farm winery authorized under this section
shall clean and sanitize all growlers he or she fills or refills in accordance with all state and county
health requirements prior to its sealing. In addition, the licensed winery or farm winery shall
sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines,
barrel tubes and any other related equipment used to fill or refill growlers. Failure to comply with
this subsection may result in penalties.

(i) Fee. — There is no additional fee for a licensed winery or farm winery authorized under
this section to sell growlers.

(j) Limitations on licensees. — To be authorized under this section, a licensed winery or
farm winery may not produce more than 25,000 barrels per calendar year at the winery’s or farm
winery’s principal place of business or manufacturing facility located in the State of West Virginia.
A licensed winery or farm winery under this section may only conduct tours, give complimentary
samples and sell growlers during the hours of operation defined for retailers. A licensed winery or
farm winery authorized under this section shall be subject to applicable penalties.

(k) Rules. — The West Virginia Alcoholic Beverage Control Commissioner, in consultation
with the Bureau for Public Health concerning sanitation, is authorized to propose rules for
legislative approval, pursuant to §29A-3-1 et seq. of this code, to implement this section.

§60-8A-6. Wine licensee’s authority to sell growlers; complementary samples;
requirements; advertisements; taxation; and fees.

(a) Sales of hard cider. — A wine retailer, private wine restaurant, private club, or wine
specially shop, who pays the fee in subsection (h) of this section may offer only hard cider for
retail sale to patrons from their licensed premises in a sealed growler for personal consumption
off the licensed premises and not for resale. Prior to the sale, the licensee shall verify, using
proper identification, that any patron purchasing hard cider is 21 years of age or over and that the
patron is not visibly intoxicated. A licensee authorized under this section may not sell, give, or
furnish other alcoholic liquors, including other types of wine, unless it is a private club licensed to
sell sealed wine for consumption off of the licensed premises and meets the requirements set out
in §60-8-3(j) and §60-8-3(l) of this code, for the sale of wine, not liquor. “Growler” means a
container or jug that is made of glass, ceramic, metal, or other approved material, that may be no
larger than 128 fluid ounces in size and must be capable of being securely sealed as approved
by the commissioner.

(b) Retail sales. — Every licensee authorized under this section shall comply with all
provisions applicable to retailers when conducting sales of hard cider and shall be subject to all
applicable requirements and penalties.

(c) Payment of taxes and fees. — A licensee authorized under this section shall pay all
taxes and fees required of 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.
(d) Advertising. — A licensee authorized under this section may advertise a particular brand or brands of hard cider and the price of the hard cider subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance.

(e) Growler requirements. — A licensee authorized under this section must fill a growler and patrons are not permitted to access the secure area or fill a growler. The licensee must sanitize, fill, securely seal, and label any growler prior to its sale. The licensee may only offer for retail sale growlers no larger than 128 fluid ounces of hard cider for personal consumption off the licensed premises and not for resale. The licensee may refill a growler subject to the requirements of this section. The licensee shall visually inspect any growler before filling or refilling it. A licensee may not fill or refill any growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

(f) Growler labeling. — A licensee authorized under this section selling growlers shall affix a conspicuous label on all sold and securely sealed growlers listing the name of the licensee selling the growler, the brand of the hard cider in the growler, the alcohol content by volume of the hard cider in the growler, and the date the growler was filled or refilled, and, further, all labeling on the growler shall be consistent with all federal labeling and warning requirements.

(g) Growler sanitation. — A licensee authorized under this section shall clean and sanitize all growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensee shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties including under §60-8-18 of this code.

(h) Fees. — Commencing July 1, 2020, and every July 1 thereafter, there is an annual $100 nonrefundable fee for a licensee to sell hard cider growlers as provided by this section. The licensee must be in good standing with the state at the time of paying the fee.
(i) Complimentary samples. — A licensee authorized under this section may provide hard cider complimentary samples which may be no greater than two fluid ounces per sample and a sampling shall not exceed six different two-fluid ounce samples per patron per day. A licensee authorized under this section providing complimentary samples shall, prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of age or over and that the patron is not visibly intoxicated. Hard cider utilized for sampling purposes must be purchased from the licensee’s inventory.

(j) Limitations on licensees. — A licensee under this section may only sell growlers during the hours of operation set forth in §60-8-34 of this code. Any licensee authorized under this section must maintain a secure area for the sale of hard cider in a growler. The secure area must only be accessible by the licensee. Any licensee authorized under this section shall be subject to the applicable penalties under the code.

(k) Nonapplicability of certain statutes. — Notwithstanding any other provision of this code to the contrary, licensees under this section are permitted to break the seal of the original container for the limited purpose of filling a growler or providing complimentary samples as provided in this section. Any unauthorized sale of hard cider or any consumption not permitted on the licensee’s premises is subject to applicable penalties under this code.

(l) The West Virginia Alcoholic Beverage Control Commissioner, in consultation with the Bureau for Public Health concerning sanitation, is authorized to propose rules for legislative approval, pursuant to §29A-3-1 et seq. of this code, to implement this section.


The West Virginia Alcoholic Beverage Control Commissioner is authorized to propose rules for legislative approval, pursuant to §29A-3-1 et seq. of this code, to implement this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is disapproved, this the 25th day of March, 2020.

Governor