

# WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 3311

BY DELEGATES HORNBY, PHILLIPS, WESTFALL, WILLIS,  
HARDY, CHIARELLI, MAYNOR, DEAN, HITE, ESPINOSA, AND  
MCGEEHAN

[Passed March 10, 2023; in effect ninety days from passage.]

OFFICE OF WEST VIRGINIA  
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FILED

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1 AN ACT to amend and reenact §60-8-2 of the Code of West Virginia, 1931, as amended, relating  
2 to the alcohol content of certain wines; changing the alcohol limit of table wine; changing  
3 the minimum alcohol content of nonfortified dessert wine.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 8. SALE OF WINES.**

**§60-8-2. Definitions.**

1 Unless the context in which used clearly requires a different meaning, as used in this  
2 article:

3 "Commissioner" or "commission" means the West Virginia Alcohol Beverage Control  
4 Commissioner.

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

18 "Fortified wine" means any wine to which brandy or other alcohol has been added where  
19 the alcohol content by volume does not exceed 24 percent, and includes nonfortified dessert

20 wines where the alcohol content by volume is greater than 17 percent and does not exceed 24  
21 percent.

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

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

37 "Hard Cider Distributor" means any person whose principal place of business is within the  
38 State of West Virginia who makes purchases from a supplier to sell or distribute hard cider (but  
39 not other types of wine) to retailers, grocery stores, private wine bed and breakfasts, private wine  
40 restaurants, private wine spas, private clubs, or wine specialty shops under authority of this code  
41 and maintains a warehouse in this state for the distribution of hard cider (but not other types of  
42 wine). For the purpose of a hard cider distributor, the term "person" means and includes an  
43 individual, firm, trust, partnership, limited partnership, limited liability company, association, or  
44 corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor  
45 licensee, and the trustee, or any other person or persons in active control of the activities of the

46 trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to  
47 the distributor license that are unlawful acts or violations of this article, notwithstanding the liability  
48 of trustees in §44D-10-1 *et seq.* of this code.

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

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

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

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

65 "Private wine restaurant" means a restaurant which: (1) Is a partnership, limited  
66 partnership, corporation, unincorporated association, or other business entity which has, as its  
67 principal purpose, the business of serving meals on its premises to its members and their guests;  
68 (2) is licensed under the provisions of this article as to all of its premises or as to a separate  
69 segregated portion of its premises to serve wine to its members and their guests when the sale  
70 accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-  
71 paying members and their guests while in the company of a member and does not admit the

72 general public. Private clubs that meet the private wine restaurant requirements numbered (1),  
73 (2), and (3) in this definition shall be considered private wine restaurants: *Provided*, That, a private  
74 wine restaurant shall have at least two restrooms: *Provided, however*, That the two restroom  
75 requirement may be waived by a written waiver provided from a local health department to the  
76 commissioner: *Provided further*, That a private wine restaurant located in an historic building may  
77 also be relieved of the two restroom requirement if a historic association or district with jurisdiction  
78 over a historic building provides a written waiver of the requirement to the commissioner: *And*  
79 *Provided further*, That in no event shall a private wine restaurant have less than one restroom.

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

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

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

96 "Table wine" means a wine with an alcohol content by volume between 0.5 percent and  
97 15.5 percent.

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

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

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

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

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

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

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

*Steve Harrison*  
.....  
Clerk of the House of Delegates

*Justin*  
.....  
Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

*Ray Shankle*  
.....  
Speaker of the House of Delegates

*G. O. B.*  
.....  
President of the Senate

2023 MAR 29 P 1:17  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

FILED

The within is *approved* this the *29th*  
Day of *March* ..... 2023.

*James Owens*  
.....  
Governor



PRESENTED TO THE GOVERNOR

MAR 22 2023

Time 2:14 pm