

SB 619 Public Comment of Legislative Rules

	<p>Please provide any written comments to the following rules pursuant to the requirements of SB 619 via US Mail on or before October 13, 2017 to:</p> <p>WVABCA – Legal Division 900 Pennsylvania Avenue, 4th Floor Charleston, WV 25302</p> <p>(Note the rules are available at http://www.abca.wv.gov/CodeRules/Pages/default.aspx).</p>		
NUMBER	TITLE		GENERAL DESCRIPTION
175 CSR 4	Sale of Wine		<p>The 21st Amendment to the U. S. Constitution gave each state the right to regulate the sale of alcohol. This rule regulates private wine restaurants, private wine spas, private wine bed and breakfasts, wine retailers, wine specialty shops and direct shippers at retail. Wine retail on and off premises licenses exist due to the requirements in the W.Va. Constitution Art VI., §46. This rule also regulates wineries, wine suppliers and wine distributors where there is some overlap under federal law, however, federal and state law look at the same and different items but at different degrees such as labeling, importing/exporting and product testing/requirements versus licensure of locations and production, distribution and transportation of wine. There may be differing views of whether state and federal are both more stringent or less stringent. Note there is a federal tax on wine in addition to a state tax on wine. Federal law also deals with Trade Practice issues (via Tied House laws and other areas) but this is viewed as in conjunction with the state law. The West Virginia Code and rules are meant to regulate and control the manufacture, sale, distribution, transportation, storage and consumption of wine and at the same time</p>

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			<p>ensure the greatest degree of personal freedom consistent with the health, safety, welfare, peace and good morals of the people of this state. Further the state has pledged the state's police powers to the sound control and temperate use of wine.</p> <p>One area where state law is perhaps more stringent is the lack of authorization to permit wine alternating proprietorships (where a winery could be used by multiple entities to produce separate wine or cider) in the state but such arrangements are permitted at the federal level (See 27 CFR 1, Subchapter A, Part 24, Subpart D §24.135, 24.136 and 24.137) (See also Industry Circular 2008-4 (August 18, 2008)). The WVABCA has attempted to pass legislation to regulate this issue at the state level but without success.</p> <p>No review was made of agricultural requirements or requirements in other areas of federal law not directly related to wine regulation.</p>
175 CSR 8	Cigarettes Produced for Export; Imported Cigarettes.		<p>This rule prescribes certain requirements for the WVABCA and the WV State Tax Department. The rule regulates cigarettes produced for export and imported cigarettes. Based on a cursory review of Title 26 USC Chapter 52 §5701-5763 (See also 27 CFR 1, Subchapter B, Part 40, 41 and 46) it appears the federal law works in conjunction with state law with respect to these requirements and the cigarettes are a taxed product. It is the WVABCA's understanding that this issue is not currently enforced by the WVABCA due to a loss of funding at the federal and state levels. There may also be some preemption by law with statutes at W. Va. Code §16-9D-1 et seq. and §16-9b-1 et seq.</p>
175 CSR 9	Prohibiting Sale of Tobacco Products in Vending Machines		<p>This rule prescribes certain requirements for the WVABCA and the WV State Tax Department. The rule</p>

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		<p>regulates cigarette vending machines and the WVABCA's involvement deals with Class A Establishments only. Based on a cursory review of Title 26 USC Chapter 52 §5701-5763, (See also 27 CFR 1, Subchapter B, Part 40, 41 and 46) it appears the federal law works in conjunction with state law with respect to cigarette vending machines and they are a taxed product. This rule attempts to create a process for using cigarette vending machines and a penalty for failing to follow the requirements. It is the WVABCA's understanding that this issue is not currently enforced by the WVABCA due to a loss of funding at the federal and state levels. There may also be some preemption by law with statutes at W. Va. Code §16-9D-1 et seq. and §16-9b-1 et seq.</p>
176 CSR 1	Nonintoxicating Beer Licensing and Operations Procedures	<p>The 21st Amendment to the U. S. Constitution gave each state the right to regulate the sale of alcohol. This rule regulates Taverns and Class B retailers at retail. Nonintoxicating Beer retail on and off premises licenses exist due to the requirements in the W.Va. Constitution Art VI., §46. This rule also regulates brewer/importers and nonintoxicating beer distributors where there is some overlap under federal law, however, federal and state law look at the same and different items but at different degrees such as labeling, importing/exporting and product testing/requirements versus licensure of locations, production, alcohol percentage of nonintoxicating beer, distribution and transportation of nonintoxicating beer. There may be differing views of whether state and federal law are both more stringent or less stringent. There is federal tax on nonintoxicating beer and a state tax on nonintoxicating beer. There no state transportation permit for nonintoxicating beer but there is under federal law. Federal law also deals with Trade Practice issues (via Tied House laws and other areas) but this is viewed in conjunction with state law. The West Virginia Code and</p>

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		<p>rules are meant to regulate and control the manufacture, sale, distribution, transportation, storage and consumption of nonintoxicating beer and at the same time provide protection of public safety, welfare, health, peace and good morals. Further the WVABCA has the state's police powers to protect against the evils attendant to the unregulated, unlicensed and unlawful manufacture, sale, distribution, transportation, storage and consumption of nonintoxicating beer and further are intended to promote the temperate use and consumption of nonintoxicating beer.</p> <p>One area of the law where the state may be more stringent is with home brew beer. Federal law (See 27 CFR 1, Subchapter A, part 25, Subpart L §25.205, §25.206 and §25.207) permits up to 100 gallons per adult/per household of home beer to be brewed for personal (family) use and not for resale. WV law follows federal law by allowing home brew beer, however federal law permits home brewed beer competitions (with no federal guidelines) while state law does not permit these events because the home brewed beer is not tested for safety and alcohol content, and further is unlicensed and unregistered beer which cannot be safely served to the public. The WVABCA has worked with the Legislature on legislation attempting to address the issue but the safety issues versus the minimal expense of licensure have not been resolved.</p> <p>Another issue is alternating proprietors at brewery premises (licensed). The WVABCA permits contract brewing but has no license to share a licensed premises between 2 brewers. Federal law permits this at 27 CFR 1, Subchapter A, Part 25, Subpart G, §25.81 and Industry Circular 2005-2 (August 12, 2005). Legislation would need to be added to change this requirement.</p>
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