

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4376**

4 (By Delegates Brown, Craig, D. Poling, R. Phillips, Hunt,
5 Swartzmiller, Michael, Skaff, Walters and Nelson)

6 (Originating in the Committee on Finance)

7 [February 23, 2012]

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9
10 A BILL to amend and reenact §60-8-3 of the Code of West Virginia,
11 1931, as amended, relating to licensing wine sales at certain
12 professional baseball stadiums; providing license fees;
13 providing a definition of professional baseball stadium;
14 providing standards for licensing and authority for the
15 commissioner to regulate such sales; and granting rule-making
16 authority.

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

18 That §60-8-3 of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted to read as follows:

20 **ARTICLE 8. SALE OF WINES.**

21 **§60-8-3. Licenses; fees; general restrictions.**

22 (a) No person may engage in business in the capacity of a
23 winery, farm winery, supplier, distributor, retailer, private wine
24 bed and breakfast, private wine restaurant, private wine spa or
25 wine specialty shop without first obtaining a license from the
26 commissioner, nor shall a person continue to engage in any such

1 activity after his or her license has expired, been suspended or
2 revoked. No person may be licensed simultaneously as a distributor
3 and a retailer. No person, except for a winery or farm winery, may
4 be licensed simultaneously as a supplier and a retailer. No person
5 may be licensed simultaneously as a supplier and a private wine bed
6 and breakfast, private wine restaurant or a private wine spa. No
7 person may be licensed simultaneously as a distributor and a
8 private wine bed and breakfast, a private wine restaurant or a
9 private wine spa. No person may be licensed simultaneously as a
10 retailer and a private wine bed and breakfast, a private wine
11 restaurant or a private wine spa.

12 (b) The commissioner shall collect an annual fee for licenses
13 issued under this article, as follows:

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

16 (2) Twenty-five hundred dollars per year for a distributor's
17 license and each separate warehouse or other facility from which a
18 distributor sells, transfers or delivers wine shall be separately
19 licensed and there shall be collected with respect to each such
20 location the annual license fee of \$2,500 as herein provided;

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

23 (4) Two hundred fifty dollars per year for a wine specialty
24 shop license, in addition to any other licensing fees paid by a
25 winery or retailer holding such a license, except for the amount of
26 the license fee and the restriction to sales of winery or farm

1 winery wines, a winery or farm winery acting as a wine specialty
2 shop retailer is subject to all other provisions of this article
3 which are applicable to a wine specialty shop retailer as defined
4 in section two of this article;

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

7 (6) One hundred fifty dollars per year for a private wine bed
8 and breakfast license, and each separate bed and breakfast from
9 which a licensee sells wine shall be separately licensed and there
10 shall be collected with respect to each such location the annual
11 license fee of \$150 as herein provided;

12 (7) Two hundred fifty dollars per year for a private wine
13 restaurant license, and each separate restaurant from which a
14 licensee sells wine shall be separately licensed and there shall be
15 collected with respect to each such location the annual license fee
16 of \$250 as herein provided;

17 (8) One hundred fifty dollars per year for a private wine spa
18 license and each separate private wine spa from which a licensee
19 sells wine shall be separately licensed and there shall be
20 collected with respect to each such location the annual license fee
21 of \$150 as herein provided;

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

25 (10) No fee shall be charged for a special one-day license
26 under subsection ~~(o)~~ (p) of this section or for a heritage fair and

1 festival license under subsection ~~(p)~~ (q) of this section; and

2 (11) One hundred fifty dollars per year for a direct shipper's
3 license for a licensee who sells and ships only wine and \$250 per
4 for a direct shipper's license who ships and sells wine,
5 nonfortified dessert wine, port, sherry or Madeira wines.

6 (12) Three hundred dollars per year for a multicapacity winery
7 or farm winery license which shall enable the holder to operate as
8 a retailer, wine specialty shop, supplier and direct shipper
9 without obtaining an individual license for each capacity.

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

14 (d) No retailer may be licensed as a private club as provided
15 by article seven of this chapter, except as provided by subsection
16 (k) of this section.

17 (e) No retailer may be licensed as a Class A retail dealer in
18 nonintoxicating beer as provided by article sixteen, chapter eleven
19 of this code: *Provided*, That a delicatessen, a caterer or party
20 supply store which is a grocery store as defined in section two of
21 this article and which is licensed as a Class A retail dealer in
22 nonintoxicating beer may be a retailer under this article:
23 *Provided, however*, That any delicatessen, caterer or party supply
24 store licensed in both such capacities must maintain average
25 monthly sales exclusive of sales of wine and nonintoxicating beer
26 which exceed the average monthly sales of nonintoxicating beer.

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

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

17 (h) The commissioner may issue a special license for the
18 retail sale of wine at any festival or fair which is endorsed or
19 sponsored by the governing body of a municipality or a county
20 commission. Such special license shall be issued for a term of no
21 longer than ten consecutive days and the fee therefor shall be \$250
22 regardless of the term of the license unless the applicant is the
23 manufacturer of said wine on a winery or a farm winery as defined
24 in section five-a, article one of this chapter, in which event the
25 fee shall be \$50 if the event is held on the premises of the winery
26 or farm winery. The application for such license shall contain

1 such information as the commissioner may reasonably require and
2 shall be submitted to the commissioner at least thirty days prior
3 to the first day when wine is to be sold at such festival or fair.
4 A winery or a farm winery licensed under this subsection may
5 exhibit, conduct tastings, not to exceed a reasonable serving, and
6 may sell wine only for consumption off the premises of such
7 festival or fair. A special license issued other than to a winery
8 or a farm winery may be issued to a "wine club" as defined herein
9 below. The festival or fair committee or the governing body shall
10 designate a person to organize a club under a name which includes
11 the name of the festival or fair and the words "wine club". The
12 license shall be issued in the name of the wine club. A licensee
13 may not commence the sale of wine as provided in this subsection
14 until the wine club has at least fifty dues-paying members who have
15 been enrolled and to whom membership cards have been issued.
16 Thereafter, new members may be enrolled and issued membership cards
17 at any time during the period for which the license is issued. A
18 wine club licensed under the provisions of this subsection may sell
19 wine only to its members, and in portions not to exceed eight
20 ounces per serving. Such sales shall take place on premises or in
21 an area cordoned or segregated so as to be closed to the general
22 public, and the general public shall not be admitted to such
23 premises or area. A wine club licensee under the provisions of
24 this subsection shall be authorized to serve complimentary samples
25 of wine in moderate quantities for tasting.

26 A license issued under the provisions of this subsection and

1 the licensee holding such license shall be subject to all other
2 provisions of this article and the rules and orders of the
3 commissioner relating to such special license: *Provided*, That the
4 commissioner may by rule, regulation or order provide for certain
5 waivers or exceptions with respect to such provisions, rules,
6 regulations or orders as the circumstances of each such festival or
7 fair may require, including, without limitation, the right to
8 revoke or suspend any license issued pursuant to this section prior
9 to any notice or hearing notwithstanding the provisions of section
10 ~~twelve~~ twenty-seven and twenty-eight of this article: *Provided*,
11 *however*, That under no circumstances shall the provisions of
12 subsection (c) or (d), section twenty of this article be waived nor
13 shall any exception be granted with respect thereto.

14 A license issued under the provisions of this subsection and
15 the licensee holding such license shall not be subject to the
16 provisions of subsection (g) of this section.

17 (i) (A) The commissioner may issue a special license for the
18 retail sale of wine in a professional baseball stadium. A license
19 to sell wine granted pursuant to this subsection entitles the
20 licensee to sell and serve wine, for consumption in a professional
21 baseball stadium. For the purpose of this subsection,
22 "professional baseball stadium" means a facility constructed
23 primarily for the use of a major or minor league baseball
24 franchisee affiliated with the National Association of Professional
25 Baseball Leagues, Inc., or its successor, and used as a major or
26 minor league baseball park. Any special license issued pursuant to

1 this subsection shall be for a term beginning on the date of
2 issuance and ending on the next following June 30, and its fee is
3 \$250 regardless of the length of the term of the license. The
4 application for the special license shall contain information as
5 the commissioner may reasonably require and must be submitted to
6 the commissioner at least thirty days prior to the first day when
7 wine is to be sold at the professional baseball stadium. The
8 special license may be issued in the name of the baseball
9 franchisee or the name of the primary food and beverage vendor
10 under contract with the baseball franchisee. These sales must take
11 place within the confines of the professional baseball stadium,
12 provided that the exterior of the area where wine sales may occur
13 are surrounded by a fence or other barrier prohibiting entry except
14 upon the franchisee's express permission, and under the conditions
15 and restrictions established by the franchisee, so that the wine
16 sales area is closed to free and unrestricted entry by the general
17 public.

18 (B) A license issued under this subsection and the licensee
19 holding the license is subject to all other provisions of this
20 article and the rules and orders of the commissioner relating to
21 the special license: *Provided*, That the commissioner may by rule or
22 order grant certain waivers or exceptions to those rules or orders
23 as the circumstances of each such professional baseball stadium may
24 require, including, without limitation, the right to revoke or
25 suspend any license issued pursuant to this section prior to any
26 notice or hearing notwithstanding sections twenty-seven and twenty-

1 eight of this article: Provided, however, That under no
2 circumstances may subsection (c) or (d), section twenty of this
3 article be waived nor shall any exception be granted concerning
4 those subsections.

5 (C) The commissioner shall propose rules for legislative
6 approval in accordance with article three, chapter twenty-nine-a of
7 this code to implement this subsection.

8 ~~(i)~~ (j) A license to sell wine granted to a private wine bed
9 and breakfast, private wine restaurant, private wine spa or a
10 private club under the provisions of this article entitles the
11 operator to sell and serve wine, for consumption on the premises of
12 the licensee, when such sale accompanies the serving of food or a
13 meal to its members and their guests in accordance with the
14 provisions of this article: *Provided*, That a licensed private wine
15 bed and breakfast, private wine restaurant, private wine spa or a
16 private club may permit a person over twenty-one years of age to
17 purchase wine, consume wine and recork or reseal, using a tamper
18 resistant cork or seal, up to two separate bottles of unconsumed
19 wine in conjunction with serving of food or a meal to its members
20 and their guests in accordance with the provisions of this article
21 and in accordance with regulations promulgated by the commissioner
22 for the purpose of consumption of said wine off premises:
23 *Provided, however*, That for this article, food or a meal provided
24 by the private licensee means that the total food purchase,
25 excluding beverage purchases, taxes, gratuity or other fees is at
26 least \$15: *Provided further*, That a licensed private wine

1 restaurant or a private club may offer for sale for consumption off
2 the premises, sealed bottles of wine to its customers provided that
3 no more than one bottle is sold per each person over twenty-one
4 years of age, as verified by the private wine restaurant or private
5 club, for consumption off the premises. Such licensees are
6 authorized to keep and maintain on their premises a supply of wine
7 in such quantities as may be appropriate for the conduct of
8 operations thereof. Any sale of wine so made shall be subject to
9 all restrictions set forth in section twenty of this article. A
10 private wine restaurant may also be licensed as a Class A retail
11 dealer in nonintoxicating beer as provided by article sixteen,
12 chapter eleven of this code.

13 ~~(j)~~ (k) With respect to subsections (h), (i), ~~(n)~~ and ~~(o)~~ (j).
14 (o) and (p) of this section, the commissioner shall promulgate
15 legislative rules in accordance with the provisions of chapter
16 twenty-nine-a of this code with regard to the form of the
17 applications, the suitability of both the applicant and location of
18 the licensed premises and such other legislative rules deemed
19 necessary to carry the provisions of such subsections into effect.

20 ~~(k)~~ (l) The commissioner shall promulgate legislative rules in
21 accordance with the provisions of chapter twenty-nine-a of this
22 code to allow restaurants to serve wine with meals, and to sell
23 wine by the bottle for off-premises consumption as provided in
24 subsection ~~(i)~~ (j) of this section. Each restaurant so licensed
25 shall be charged an additional \$100 per year fee.

26 ~~(i)~~ (m) The commissioner shall establish guidelines to permit

1 wines to be sold in all stores licensed for retail sales.

2 ~~(m)~~ (n) Wineries and farm wineries may advertise off premises
3 as provided in section seven, article twenty-two, chapter seventeen
4 of this code.

5 ~~(n)~~ (o) A wine specialty shop under this article may also hold
6 a wine sampling license authorizing the wine specialty shop to
7 conduct special wine sampling events at a licensed wine specialty
8 shop location during regular hours of business. The wine specialty
9 shop may serve up to three complimentary samples of wine,
10 consisting of no more than one ounce each, to any one consumer in
11 one day. Persons serving the complimentary samples must be
12 twenty-one years of age and an authorized representative of the
13 licensed wine specialty shop, winery, farm winery or a
14 representative of a distributor or registered supplier.
15 Distributor and supplier representatives attending wine sampling
16 events must be registered with the commissioner. No licensee,
17 employee or representative may furnish, give or serve complimentary
18 samples of wine to any person less than twenty-one years of age or
19 to a person who is physically incapacitated due to the consumption
20 of alcoholic liquor or the use of drugs. The wine specialty shop
21 shall notify and secure permission from the commissioner for all
22 wine sampling events one month prior to the event. Wine sampling
23 events may not exceed six hours per calendar day. Licensees must
24 purchase all wines used during these events from a licensed farm
25 winery or a licensed distributor.

26 ~~(o)~~ (p) The commissioner may issue special one-day licenses to

1 duly organized, nonprofit corporations and associations allowing
2 the sale and serving of wine when raising money for athletic,
3 charitable, educational or religious purposes. The license
4 application shall contain information as the commissioner may
5 reasonably require and shall be submitted to the commissioner at
6 least thirty days prior to the event. Wines used during these
7 events may be donated by or purchased from a licensed retailer, a
8 distributor or a farm winery. Under no circumstances may the
9 provision of subsection (c), section twenty of this article be
10 waived nor may any exception be granted with respect thereto.

11 ~~(p)~~ (q) The commissioner may issue special licenses to
12 heritage fairs and festivals allowing the sale, serving and
13 sampling of wine from a licensed farm winery. The license
14 application shall contain information required by the commissioner
15 and shall be submitted to the commissioner at least thirty days
16 prior to the event. Wines used during these events may be donated
17 by or purchased from a licensed farm winery. Under no
18 circumstances may the provision of subsection (c), section twenty
19 of this article be waived nor may any exception be granted with
20 respect thereto. The commissioner shall propose rules for
21 legislative approval in accordance with article three, chapter
22 twenty-nine-a of this code to implement the provisions of this
23 subsection.