

H. B. 4376

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

[Introduced February 1, 2012; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. SALE OF WINES.

§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

1 wine specialty shop without first obtaining a license from the
2 commissioner, nor shall a person continue to engage in any such
3 activity after his or her license has expired, been suspended or
4 revoked. No person may be licensed simultaneously as a distributor
5 and a retailer. No person, except for a winery or farm winery, may
6 be licensed simultaneously as a supplier and a retailer. No person
7 may be licensed simultaneously as a supplier and a private wine bed
8 and breakfast, private wine restaurant or a private wine spa. No
9 person may be licensed simultaneously as a distributor and a
10 private wine bed and breakfast, a private wine restaurant or a
11 private wine spa. No person may be licensed simultaneously as a
12 retailer and a private wine bed and breakfast, a private wine
13 restaurant or a private wine spa.

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

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

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

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

1 (4) Two hundred fifty dollars per year for a wine specialty
2 shop license, in addition to any other licensing fees paid by a
3 winery or retailer holding such a license, except for the amount of
4 the license fee and the restriction to sales of winery or farm
5 winery wines, a winery or farm winery acting as a wine specialty
6 shop retailer is subject to all other provisions of this article
7 which are applicable to a wine specialty shop retailer as defined
8 in section two of this article;

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

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

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

21 (8) One hundred fifty dollars per year for a private wine spa
22 license and each separate private wine spa from which a licensee
23 sells wine shall be separately licensed and there shall be
24 collected with respect to each such location the annual license fee

1 of \$150 as herein provided;

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

5 (10) No fee shall be charged for a special one-day license
6 under subsection (o) of this section or for a heritage fair and
7 festival license under subsection (p) of this section; and

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

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

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

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

23 (e) No retailer may be licensed as a Class A retail dealer in
24 nonintoxicating beer as provided by article sixteen, chapter eleven

1 of this code: *Provided*, That a delicatessen, a caterer or party
2 supply store which is a grocery store as defined in section two of
3 this article and which is licensed as a Class A retail dealer in
4 nonintoxicating beer may be a retailer under this article:
5 *Provided, however*, That any delicatessen, caterer or party supply
6 store licensed in both such capacities must maintain average
7 monthly sales exclusive of sales of wine and nonintoxicating beer
8 which exceed the average monthly sales of nonintoxicating beer.

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

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

1 (h) The commissioner may issue a special license for the
2 retail sale of wine at any festival or fair which is endorsed or
3 sponsored by the governing body of a municipality or a county
4 commission. Such special license shall be issued for a term of no
5 longer than ten consecutive days and the fee therefor shall be \$250
6 regardless of the term of the license unless the applicant is the
7 manufacturer of said wine on a winery or a farm winery as defined
8 in section five-a, article one of this chapter, in which event the
9 fee shall be \$50 if the event is held on the premises of the winery
10 or farm winery. The application for such license shall contain
11 such information as the commissioner may reasonably require and
12 shall be submitted to the commissioner at least thirty days prior
13 to the first day when wine is to be sold at such festival or fair.
14 A winery or a farm winery licensed under this subsection may
15 exhibit, conduct tastings, not to exceed a reasonable serving, and
16 may sell wine only for consumption off the premises of such
17 festival or fair. A special license issued other than to a winery
18 or a farm winery may be issued to a "wine club" as defined herein
19 below. The festival or fair committee or the governing body shall
20 designate a person to organize a club under a name which includes
21 the name of the festival or fair and the words "wine club". The
22 license shall be issued in the name of the wine club. A licensee
23 may not commence the sale of wine as provided in this subsection
24 until the wine club has at least fifty dues-paying members who have

1 been enrolled and to whom membership cards have been issued.
2 Thereafter, new members may be enrolled and issued membership cards
3 at any time during the period for which the license is issued. A
4 wine club licensed under ~~the provisions of~~ this subsection may sell
5 wine only to its members, and in portions not to exceed eight
6 ounces per serving. Such sales shall take place on premises or in
7 an area cordoned or segregated so as to be closed to the general
8 public, and the general public shall not be admitted to such
9 premises or area. A wine club licensee under ~~the provisions of~~
10 this subsection shall be authorized to serve complimentary samples
11 of wine in moderate quantities for tasting.

12 A license issued under ~~the provisions of~~ this subsection and
13 the licensee holding such license shall be subject to all other
14 provisions of this article and the rules and orders of the
15 commissioner relating to such special license: *Provided*, That the
16 commissioner may by rule, regulation or order provide for certain
17 waivers or exceptions with respect to such provisions, rules,
18 regulations or orders as the circumstances of each such festival or
19 fair may require, including, without limitation, the right to
20 revoke or suspend any license issued pursuant to this section prior
21 to any notice or hearing notwithstanding ~~the provisions of~~ section
22 twelve of this article: *Provided, however*, That under no
23 circumstances shall ~~the provisions of~~ subsection (c) or (d),
24 section twenty of this article be waived nor shall any exception be

1 granted with respect thereto.

2 A license issued under ~~the provisions of~~ this subsection and
3 the licensee holding such license shall not be subject to ~~the~~
4 ~~provisions of~~ subsection (g) of this section.

5 (i) (A) The commissioner may issue a special license for the
6 retail sale of wine in a professional baseball stadium. For the
7 purpose of this subsection, "professional baseball stadium" means
8 a facility constructed primarily for the use of a major or minor
9 league baseball franchisee affiliated with the National Association
10 of Professional Baseball Leagues, Inc., or its successor, and used
11 as a major or minor league baseball park. Any special license
12 issued pursuant to this subsection shall be for a term beginning on
13 the date of issuance and ending on the next following June 30, and
14 its fee is \$250 regardless of the length of the term of the
15 license. The application for the special license shall contain
16 information as the commissioner may reasonably require and must be
17 submitted to the commissioner at least thirty days prior to the
18 first day when wine is to be sold at the professional baseball
19 stadium. The special license may be issued in the name of the
20 baseball franchisee or the name of the primary food and beverage
21 vendor under contract with the baseball franchisee. These sales
22 must take place within the confines of the professional baseball
23 stadium, provided that the exterior of the area where wine sales
24 may occur are surrounded by a fence or other barrier prohibiting

1 entry except upon the franchisee's express permission, and under
2 the conditions and restrictions established by the franchisee, so
3 that the wine sales area is closed to free and unrestricted entry
4 by the general public.

5 (B) A license issued under this subsection and the licensee
6 holding the license is subject to all other provisions of this
7 article and the rules and orders of the commissioner relating to
8 the special license: *Provided*, That the commissioner may by rule or
9 order grant certain waivers or exceptions to those rules or orders
10 as the circumstances of each such professional baseball stadium may
11 require, including, without limitation, the right to revoke or
12 suspend any license issued pursuant to this section prior to any
13 notice or hearing notwithstanding section twelve of this article:
14 *Provided, however*, That under no circumstances may subsection (c)
15 or (d), section twenty of this article be waived nor shall any
16 exception be granted concerning those subsections.

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

20 ~~(i)~~ (j) A license to sell wine granted to a private wine bed
21 and breakfast, private wine restaurant, private wine spa or a
22 private club under ~~the provisions of~~ this article entitles the
23 operator to sell and serve wine, for consumption on the premises of
24 the licensee, when such sale accompanies the serving of food or a

1 meal to its members and their guests in accordance with ~~the~~
2 ~~provisions of~~ this article: *Provided*, That a licensed private wine
3 bed and breakfast, private wine restaurant, private wine spa or a
4 private club may permit a person over twenty-one years of age to
5 purchase wine, consume wine and recork or reseal, using a tamper
6 resistant cork or seal, up to two separate bottles of unconsumed
7 wine in conjunction with serving of food or a meal to its members
8 and their guests in accordance with ~~the provisions of~~ this article
9 and in accordance with regulations promulgated by the commissioner
10 for the purpose of consumption of said wine off premises:
11 *Provided, however*, That for this article, food or a meal provided
12 by the private licensee means that the total food purchase,
13 excluding beverage purchases, taxes, gratuity or other fees is at
14 least \$15: *Provided further*, That a licensed private wine
15 restaurant or a private club may offer for sale for consumption off
16 the premises, sealed bottles of wine to its customers provided that
17 no more than one bottle is sold per each person over twenty-one
18 years of age, as verified by the private wine restaurant or private
19 club, for consumption off the premises. Such licensees are
20 authorized to keep and maintain on their premises a supply of wine
21 in such quantities as may be appropriate for the conduct of
22 operations thereof. Any sale of wine so made shall be subject to
23 all restrictions set forth in section twenty of this article. A
24 private wine restaurant may also be licensed as a Class A retail

1 dealer in nonintoxicating beer as provided by article sixteen,
2 chapter eleven of this code.

3 ~~(j)~~ (k) With respect to subsections (h), (i), ~~(n)~~ and ~~(o)~~ (j).
4 (o) and (p) of this section, the commissioner shall promulgate
5 legislative rules in accordance with ~~the provisions of~~ chapter
6 twenty-nine-a of this code with regard to the form of the
7 applications, the suitability of both the applicant and location of
8 the licensed premises and such other legislative rules deemed
9 necessary to carry the provisions of such subsections into effect.

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

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

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

21 ~~(n)~~ (o) A wine specialty shop under this article may also hold
22 a wine sampling license authorizing the wine specialty shop to
23 conduct special wine sampling events at a licensed wine specialty
24 shop location during regular hours of business. The wine specialty

1 shop may serve up to three complimentary samples of wine,
2 consisting of no more than one ounce each, to any one consumer in
3 one day. Persons serving the complimentary samples must be
4 twenty-one years of age and an authorized representative of the
5 licensed wine specialty shop, winery, farm winery or a
6 representative of a distributor or registered supplier.
7 Distributor and supplier representatives attending wine sampling
8 events must be registered with the commissioner. No licensee,
9 employee or representative may furnish, give or serve complimentary
10 samples of wine to any person less than twenty-one years of age or
11 to a person who is physically incapacitated due to the consumption
12 of alcoholic liquor or the use of drugs. The wine specialty shop
13 shall notify and secure permission from the commissioner for all
14 wine sampling events one month prior to the event. Wine sampling
15 events may not exceed six hours per calendar day. Licensees must
16 purchase all wines used during these events from a licensed farm
17 winery or a licensed distributor.

18 ~~(e)~~ (p) The commissioner may issue special one-day licenses to
19 duly organized, nonprofit corporations and associations allowing
20 the sale and serving of wine when raising money for athletic,
21 charitable, educational or religious purposes. The license
22 application shall contain information as the commissioner may
23 reasonably require and shall be submitted to the commissioner at
24 least thirty days prior to the event. Wines used during these

1 events may be donated by or purchased from a licensed retailer, a
2 distributor or a farm winery. Under no circumstances may ~~the~~
3 ~~provision of~~ subsection (c), section twenty of this article be
4 waived nor may any exception be granted with respect thereto.

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

NOTE: The purpose of this bill is to permit wine sales at professional baseball stadiums. The bill sets license fees. The bill defines the term " professional baseball stadium." The bill provides standards for licensing and authority for the commissioner to regulate such sales. The bill also grants rule-making authority.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.