

E N G R O S S E D

COMMITTEE SUBSTITUTE

FOR

H. B. 4376

(BY DELEGATES BROWN, CRAIG, D. POLING, R. PHILLIPS, HUNT,
SWARTZMILLER, MICHAEL, SKAFF, WALTERS AND NELSON)

(Originating in the Committee on Finance)
[February 23, 2012]

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.

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

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

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

22 (2) Twenty-five hundred dollars per year for a
23 distributor's license and each separate warehouse or other
24 facility from which a distributor sells, transfers or delivers
25 wine shall be separately licensed and there shall be collected
26 with respect to each such location the annual license fee of
27 \$2,500 as herein provided;

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

30 (4) Two hundred fifty dollars per year for a wine
31 specialty shop license, in addition to any other licensing fees
32 paid by a winery or retailer holding such a license, except for
33 the amount of the license fee and the restriction to sales of
34 winery or farm winery wines, a winery or farm winery acting
35 as a wine specialty shop retailer is subject to all other

36 provisions of this article which are applicable to a wine
37 specialty shop retailer as defined in section two of this article;

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

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

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

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

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

58 (10) No fee shall be charged for a special one-day license
59 under subsection ~~(o)~~ (p) of this section or for a heritage fair
60 and festival license under subsection ~~(p)~~ (q) of this section;
61 and

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

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

72 (c) The license period shall begin on July 1, of each year
73 and end on June 30 of the following year and if granted for a

74 less period, the same shall be computed semiannually in
75 proportion to the remainder of the fiscal year.

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

79 (e) No retailer may be licensed as a Class A retail dealer
80 in nonintoxicating beer as provided by article sixteen, chapter
81 eleven of this code: *Provided*, That a delicatessen, a caterer
82 or party supply store which is a grocery store as defined in
83 section two of this article and which is licensed as a Class A
84 retail dealer in nonintoxicating beer may be a retailer under
85 this article: *Provided, however*, That any delicatessen,
86 caterer or party supply store licensed in both such capacities
87 must maintain average monthly sales exclusive of sales of
88 wine and nonintoxicating beer which exceed the average
89 monthly sales of nonintoxicating beer.

90 (f) A wine specialty shop under this article may also hold a
91 wine tasting license authorizing such retailer to serve
92 complimentary samples of wine in moderate quantities for

93 tasting. Such wine specialty shop shall organize a wine taster's
94 club, which has at least fifty duly elected or approved
95 dues-paying members in good standing. Such club shall meet
96 on the wine specialty shop's premises not more than one time
97 per week and shall either meet at a time when the premises are
98 closed to the general public, or shall meet in a separate
99 segregated facility on the premises to which the general public
100 is not admitted. Attendance at tastings shall be limited to duly
101 elected or approved dues-paying members and their guests.

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

107 (h) The commissioner may issue a special license for the
108 retail sale of wine at any festival or fair which is endorsed or
109 sponsored by the governing body of a municipality or a
110 county commission. Such special license shall be issued for
111 a term of no longer than ten consecutive days and the fee

112 therefor shall be \$250 regardless of the term of the license
113 unless the applicant is the manufacturer of said wine on a
114 winery or a farm winery as defined in section five-a, article
115 one of this chapter, in which event the fee shall be \$50 if the
116 event is held on the premises of the winery or farm winery.
117 The application for such license shall contain such
118 information as the commissioner may reasonably require and
119 shall be submitted to the commissioner at least thirty days
120 prior to the first day when wine is to be sold at such festival
121 or fair. A winery or a farm winery licensed under this
122 subsection may exhibit, conduct tastings, not to exceed a
123 reasonable serving, and may sell wine only for consumption
124 off the premises of such festival or fair. A special license
125 issued other than to a winery or a farm winery may be issued
126 to a "wine club" as defined herein below. The festival or fair
127 committee or the governing body shall designate a person to
128 organize a club under a name which includes the name of the
129 festival or fair and the words "wine club". The license shall
130 be issued in the name of the wine club. A licensee may not

131 commence the sale of wine as provided in this subsection
132 until the wine club has at least fifty dues-paying members
133 who have been enrolled and to whom membership cards have
134 been issued. Thereafter, new members may be enrolled and
135 issued membership cards at any time during the period for
136 which the license is issued. A wine club licensed under the
137 provisions of this subsection may sell wine only to its
138 members, and in portions not to exceed eight ounces per
139 serving. Such sales shall take place on premises or in an area
140 cordoned or segregated so as to be closed to the general
141 public, and the general public shall not be admitted to such
142 premises or area. A wine club licensee under the provisions
143 of this subsection shall be authorized to serve complimentary
144 samples of wine in moderate quantities for tasting.

145 A license issued under the provisions of this subsection
146 and the licensee holding such license shall be subject to all
147 other provisions of this article and the rules and orders of the
148 commissioner relating to such special license: *Provided,*
149 That the commissioner may by rule, regulation or order

150 provide for certain waivers or exceptions with respect to such
151 provisions, rules, regulations or orders as the circumstances
152 of each such festival or fair may require, including, without
153 limitation, the right to revoke or suspend any license issued
154 pursuant to this section prior to any notice or hearing
155 notwithstanding the provisions of section ~~twelve~~ twenty-
156 seven and twenty-eight of this article: *Provided, however,*
157 That under no circumstances shall the provisions of
158 subsection (c) or (d), section twenty of this article be waived
159 nor shall any exception be granted with respect thereto.

160 A license issued under the provisions of this subsection
161 and the licensee holding such license shall not be subject to
162 the provisions of subsection (g) of this section.

163 (i) (A) The commissioner may issue a special license for
164 the retail sale of wine in a professional baseball stadium. A
165 license to sell wine granted pursuant to this subsection
166 entitles the licensee to sell and serve wine, for consumption
167 in a professional baseball stadium. For the purpose of this
168 subsection, "professional baseball stadium" means a facility

169 constructed primarily for the use of a major or minor league
170 baseball franchisee affiliated with the National Association
171 of Professional Baseball Leagues, Inc., or its successor, and
172 used as a major or minor league baseball park. Any special
173 license issued pursuant to this subsection shall be for a term
174 beginning on the date of issuance and ending on the next
175 following June 30, and its fee is \$250 regardless of the length
176 of the term of the license. The application for the special
177 license shall contain information as the commissioner may
178 reasonably require and must be submitted to the
179 commissioner at least thirty days prior to the first day when
180 wine is to be sold at the professional baseball stadium. The
181 special license may be issued in the name of the baseball
182 franchisee or the name of the primary food and beverage
183 vendor under contract with the baseball franchisee. These
184 sales must take place within the confines of the professional
185 baseball stadium, provided that the exterior of the area where
186 wine sales may occur are surrounded by a fence or other
187 barrier prohibiting entry except upon the franchisee's express

188 permission, and under the conditions and restrictions
189 established by the franchisee, so that the wine sales area is
190 closed to free and unrestricted entry by the general public.

191 (B) A license issued under this subsection and the
192 licensee holding the license is subject to all other provisions
193 of this article and the rules and orders of the commissioner
194 relating to the special license: *Provided*, That the
195 commissioner may by rule or order grant certain waivers or
196 exceptions to those rules or orders as the circumstances of
197 each such professional baseball stadium may require,
198 including, without limitation, the right to revoke or suspend
199 any license issued pursuant to this section prior to any notice
200 or hearing notwithstanding sections twenty-seven and
201 twenty-eight of this article: *Provided, however*, That under no
202 circumstances may subsection (c) or (d), section twenty of
203 this article be waived nor shall any exception be granted
204 concerning those subsections.

205 (C) The commissioner has the authority to propose rules
206 for legislative approval in accordance with article three,

207 chapter twenty-nine-a of this code to implement this
208 subsection.

209 (i) (j) A license to sell wine granted to a private wine bed
210 and breakfast, private wine restaurant, private wine spa or a
211 private club under the provisions of this article entitles the
212 operator to sell and serve wine, for consumption on the
213 premises of the licensee, when such sale accompanies the
214 serving of food or a meal to its members and their guests in
215 accordance with the provisions of this article: *Provided*, That
216 a licensed private wine bed and breakfast, private wine
217 restaurant, private wine spa or a private club may permit a
218 person over twenty-one years of age to purchase wine,
219 consume wine and recork or reseal, using a tamper resistant
220 cork or seal, up to two separate bottles of unconsumed wine
221 in conjunction with serving of food or a meal to its members
222 and their guests in accordance with the provisions of this
223 article and in accordance with regulations promulgated by the
224 commissioner for the purpose of consumption of said wine
225 off premises: *Provided, however*, That for this article, food

226 or a meal provided by the private licensee means that the total
227 food purchase, excluding beverage purchases, taxes, gratuity
228 or other fees is at least \$15: *Provided further*, That a licensed
229 private wine restaurant or a private club may offer for sale for
230 consumption off the premises, sealed bottles of wine to its
231 customers provided that no more than one bottle is sold per
232 each person over twenty-one years of age, as verified by the
233 private wine restaurant or private club, for consumption off
234 the premises. Such licensees are authorized to keep and
235 maintain on their premises a supply of wine in such quantities
236 as may be appropriate for the conduct of operations thereof.
237 Any sale of wine so made shall be subject to all restrictions
238 set forth in section twenty of this article. A private wine
239 restaurant may also be licensed as a Class A retail dealer in
240 nonintoxicating beer as provided by article sixteen, chapter
241 eleven of this code.

242 ~~(j)~~ (k) With respect to subsections (h), (i), ~~(n)~~ and ~~(o)~~ (j),
243 (o) and (p) of this section, the commissioner shall promulgate
244 legislative rules in accordance with the provisions of chapter

245 twenty-nine-a of this code with regard to the form of the
246 applications, the suitability of both the applicant and location
247 of the licensed premises and such other legislative rules
248 deemed necessary to carry the provisions of such subsections
249 into effect.

250 ~~(k)~~ (l) The commissioner shall promulgate legislative
251 rules in accordance with the provisions of chapter
252 twenty-nine-a of this code to allow restaurants to serve wine
253 with meals, and to sell wine by the bottle for off-premises
254 consumption as provided in subsection ~~(i)~~ (j) of this section.
255 Each restaurant so licensed shall be charged an additional
256 \$100 per year fee.

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

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

262 ~~(n)~~ (o) A wine specialty shop under this article may also
263 hold a wine sampling license authorizing the wine specialty

264 shop to conduct special wine sampling events at a licensed
265 wine specialty shop location during regular hours of business.
266 The wine specialty shop may serve up to three
267 complimentary samples of wine, consisting of no more than
268 one ounce each, to any one consumer in one day. Persons
269 serving the complimentary samples must be twenty-one years
270 of age and an authorized representative of the licensed wine
271 specialty shop, winery, farm winery or a representative of a
272 distributor or registered supplier. Distributor and supplier
273 representatives attending wine sampling events must be
274 registered with the commissioner. No licensee, employee or
275 representative may furnish, give or serve complimentary
276 samples of wine to any person less than twenty-one years of
277 age or to a person who is physically incapacitated due to the
278 consumption of alcoholic liquor or the use of drugs. The
279 wine specialty shop shall notify and secure permission from
280 the commissioner for all wine sampling events one month
281 prior to the event. Wine sampling events may not exceed six
282 hours per calendar day. Licensees must purchase all wines

283 used during these events from a licensed farm winery or a
284 licensed distributor.

285 ~~(o)~~ (p) The commissioner may issue special one-day
286 licenses to duly organized, nonprofit corporations and
287 associations allowing the sale and serving of wine when
288 raising money for athletic, charitable, educational or religious
289 purposes. The license application shall contain information
290 as the commissioner may reasonably require and shall be
291 submitted to the commissioner at least thirty days prior to the
292 event. Wines used during these events may be donated by or
293 purchased from a licensed retailer, a distributor or a farm
294 winery. Under no circumstances may the provision of
295 subsection (c), section twenty of this article be waived nor
296 may any exception be granted with respect thereto.

297 ~~(p)~~ (q) The commissioner may issue special licenses to
298 heritage fairs and festivals allowing the sale, serving and
299 sampling of wine from a licensed farm winery. The license
300 application shall contain information required by the
301 commissioner and shall be submitted to the commissioner at

302 least thirty days prior to the event. Wines used during these
303 events may be donated by or purchased from a licensed farm
304 winery. Under no circumstances may the provision of
305 subsection (c), section twenty of this article be waived nor
306 may any exception be granted with respect thereto. The
307 commissioner shall propose rules for legislative approval in
308 accordance with article three, chapter twenty-nine-a of this
309 code to implement the provisions of this subsection.