

1 **Senate Bill No. 470**

2 (By Senators Miller, Williams, Stollings, Kessler (Mr. President)
3 and Beach)

4 _____
5 [Introduced March 7, 2013; referred to the Committee on
6 Agriculture and Rural Development; and then to the Committee on
7 the Judiciary.]
8 _____

9
10
11
12 A BILL to amend and reenact §60-8-3 of the Code of West Virginia,
13 1931, as amended, relating to permitting farm wineries to sell
14 samples and wine during the operation of fairs or festivals on
15 Sunday mornings.

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

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

19 **ARTICLE 8. SALE OF WINES.**

20 **§60-8-3. Licenses; fees; general restrictions.**

21 (a) No person may engage in business in the capacity of a
22 winery, farm winery, supplier, distributor, retailer, private wine

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

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

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

19 (2) Twenty-five hundred dollars per year for a distributor's
20 license and each separate warehouse or other facility from which a
21 distributor sells, transfers or delivers wine shall be separately
22 licensed and there shall be collected with respect to each ~~such~~

1 location the annual license fee of \$2,500 as herein provided;

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

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

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

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

19 (7) Two hundred fifty dollars per year for a private wine
20 restaurant license, and each separate restaurant from which a
21 licensee sells wine shall be separately licensed and there shall be
22 collected with respect to each ~~such~~ location the annual license fee

1 of \$250 as herein provided;

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

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

10 (10) No fee shall be charged for a special one-day license
11 under subsection (p) of this section or for a heritage fair and
12 festival license under subsection (q) of this section; and

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

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

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

1 period, the same shall be computed semiannually in proportion to
2 the remainder of the fiscal year.

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

6 (e) No retailer may be licensed as a Class A retail dealer in
7 nonintoxicating beer as provided by article sixteen, chapter eleven
8 of this code: *Provided*, That a delicatessen, a caterer or party
9 supply store which is a grocery store as defined in section two of
10 this article and which is licensed as a Class A retail dealer in
11 nonintoxicating beer may be a retailer under this article:
12 *Provided, however*, That any delicatessen, caterer or party supply
13 store licensed in both ~~such~~ capacities must maintain average
14 monthly sales exclusive of sales of wine and nonintoxicating beer
15 which exceed the average monthly sales of nonintoxicating beer.

16 (f) A wine specialty shop under this article may also hold a
17 wine tasting license authorizing ~~such~~ the retailer to serve
18 complimentary samples of wine in moderate quantities for tasting.
19 Such wine specialty shop shall organize a wine taster's club, which
20 has at least fifty duly elected or approved dues-paying members in
21 good standing. Such club shall meet on the wine specialty shop's
22 premises not more than one time per week and shall either meet at

1 a time when the premises are closed to the general public, or shall
2 meet in a separate segregated facility on the premises to which the
3 general public is not admitted. Attendance at tastings shall be
4 limited to duly elected or approved dues-paying members and their
5 guests.

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

10 (h) The commissioner may issue a special license for the
11 retail sale of wine at any festival or fair which is endorsed or
12 sponsored by the governing body of a municipality or a county
13 commission. Such special license shall be issued for a term of no
14 longer than ten consecutive days and the fee therefor shall be \$250
15 regardless of the term of the license unless the applicant is the
16 manufacturer of said wine on a winery or a farm winery as defined
17 in section five-a, article one of this chapter, in which event the
18 fee shall be \$50 if the event is held on the premises of the winery
19 or farm winery. The application for ~~such~~ the license shall contain
20 ~~such~~ information as the commissioner may reasonably require and
21 shall be submitted to the commissioner at least thirty days prior
22 to the first day when wine is to be sold at ~~such~~ the festival or

1 fair. A winery or a farm winery licensed under this subsection may
2 exhibit, conduct tastings or sell samples, not to exceed a
3 reasonable serving of three ounces, and may sell wine ~~only~~ samples
4 for consumption ~~off~~ on the premises during the operation of ~~such a~~
5 festival or fair: Provided, That for licensed wineries or farm
6 wineries at a licensed festival or fair the tastings, samples and
7 off-premises sales shall occur under the hours of operation as
8 required in this article, except that on Sunday tastings, samples
9 and off-premises sales are unlawful between the hours of 2:00 a. m.
10 and 10:00 a. m. A special license issued other than to a winery or
11 a farm winery may be issued to a "wine club" as defined herein
12 below. The festival or fair committee or the governing body shall
13 designate a person to organize a club under a name which includes
14 the name of the festival or fair and the words "wine club". The
15 license shall be issued in the name of the wine club. A licensee
16 may not commence the sale of wine as provided in this subsection
17 until the wine club has at least fifty dues-paying members who have
18 been enrolled and to whom membership cards have been issued.
19 Thereafter, new members may be enrolled and issued membership cards
20 at any time during the period for which the license is issued. A
21 wine club licensed under the provisions of this subsection may sell
22 wine only to its members, and in portions not to exceed eight

1 ounces per serving. ~~Such~~ The sales shall take place on premises or
2 in an area cordoned or segregated so as to be closed to the general
3 public, and the general public shall not be admitted to ~~such~~ the
4 premises or area. A wine club licensee under the provisions of
5 this subsection shall be authorized to serve complimentary samples
6 of wine in moderate quantities for tasting.

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

21 A license issued under the provisions of this subsection and
22 the licensee holding ~~such~~ the license ~~shall not be~~ is not subject

1 to the provisions of subsection (g) of this section.

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

1 provided that the exterior of the area where wine sales may occur
2 are surrounded by a fence or other barrier prohibiting entry except
3 upon the franchisee's express permission, and under the conditions
4 and restrictions established by the franchisee, so that the wine
5 sales area is closed to free and unrestricted entry by the general
6 public.

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

20 (C) The commissioner has the authority to propose rules for
21 legislative approval in accordance with article three, chapter
22 twenty-nine-a of this code to implement this subsection.

1 (j) A license to sell wine granted to a private wine bed and
2 breakfast, private wine restaurant, private wine spa or a private
3 club under the provisions of this article entitles the operator to
4 sell and serve wine, for consumption on the premises of the
5 licensee, when ~~such~~ the sale accompanies the serving of food or a
6 meal to its members and their guests in accordance with the
7 provisions of this article: *Provided*, That a licensed private wine
8 bed and breakfast, private wine restaurant, private wine spa or a
9 private club may permit a person over twenty-one years of age to
10 purchase wine, consume wine and recork or reseal, using a tamper
11 resistant cork or seal, up to two separate bottles of unconsumed
12 wine in conjunction with serving of food or a meal to its members
13 and their guests in accordance with the provisions of this article
14 and in accordance with regulations promulgated by the commissioner
15 for the purpose of consumption of said wine off premises:
16 *Provided, however*, That for this article, food or a meal provided
17 by the private licensee means that the total food purchase,
18 excluding beverage purchases, taxes, gratuity or other fees is at
19 least \$15: *Provided further*, That a licensed private wine
20 restaurant or a private club may offer for sale for consumption off
21 the premises, sealed bottles of wine to its customers provided that
22 no more than one bottle is sold per each person over twenty-one

1 years of age, as verified by the private wine restaurant or private
2 club, for consumption off the premises. Such licensees are
3 authorized to keep and maintain on their premises a supply of wine
4 in ~~such~~ quantities as may be appropriate for the conduct of
5 operations thereof. Any sale of wine so made shall be subject to
6 all restrictions set forth in section twenty of this article. A
7 private wine restaurant may also be licensed as a Class A retail
8 dealer in nonintoxicating beer as provided by article sixteen,
9 chapter eleven of this code.

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

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

1 (m) The commissioner shall establish guidelines to permit
2 wines to be sold in all stores licensed for retail sales.

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

6 (o) A wine specialty shop under this article may also hold a
7 wine sampling license authorizing the wine specialty shop to
8 conduct special wine sampling events at a licensed wine specialty
9 shop location during regular hours of business. The wine specialty
10 shop may serve up to three complimentary samples of wine,
11 consisting of no more than one ounce each, to any one consumer in
12 one day. Persons serving the complimentary samples must be
13 twenty-one years of age and an authorized representative of the
14 licensed wine specialty shop, winery, farm winery or a
15 representative of a distributor or registered supplier.
16 Distributor and supplier representatives attending wine sampling
17 events must be registered with the commissioner. No licensee,
18 employee or representative may furnish, give or serve complimentary
19 samples of wine to any person less than twenty-one years of age or
20 to a person who is physically incapacitated due to the consumption
21 of alcoholic liquor or the use of drugs. The wine specialty shop
22 shall notify and secure permission from the commissioner for all

1 wine sampling events one month prior to the event. Wine sampling
2 events may not exceed six hours per calendar day. Licensees must
3 purchase all wines used during these events from a licensed farm
4 winery or a licensed distributor.

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

16 (q) The commissioner may issue special licenses to heritage
17 fairs and festivals allowing the sale, serving and sampling of wine
18 from a licensed farm winery. The license application shall contain
19 information required by the commissioner and shall be submitted to
20 the commissioner at least thirty days prior to the event. Wines
21 used during these events may be donated by or purchased from a
22 licensed farm winery. Under no circumstances may the provision of

1 subsection (c), section twenty of this article be waived nor may
2 any exception be granted with respect thereto. The commissioner
3 shall propose rules for legislative approval in accordance with
4 article three, chapter twenty-nine-a of this code to implement the
5 provisions of this subsection.

(NOTE: The purpose of this bill is to permit farm wineries to sell samples and wine during the operation of fairs or festivals and on Sunday mornings of those events.)

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

AGRICULTURE AND RURAL DEVELOPMENT COMMITTEE AMENDMENT

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Senate Bill No. 470--A BILL to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating generally to permitting wineries and farm wineries to sell samples and wine at licensed fairs or festivals on Sunday mornings; and limiting samples to three ounces.