

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4412**

4 (By Delegates Skaff, Barrett, Walters, Guthrie, Sponaugle, E.
5 Nelson, R. Phillips, Gearheart and Reynolds)

6 (By Request of the Alcohol Beverage Control Commissioner)

7 (Originating in the Committee on the Judiciary)

8 [February 10, 2014]

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §11-16-11b; and to
12 amend and reenact §60-8-3 of said code, all relating to
13 creating a special one-day license for charitable events to
14 sell certain alcoholic beverages; creating a one-day special
15 one-day license for authorized nonprofit entities to sell
16 nonintoxicating beer at charitable events; clarifying the
17 existing one-day special license for authorized nonprofit
18 entities to sell wine at charitable events; establishing a fee
19 for the special one-day licenses; and rulemaking.

20 Be it enacted by the Legislature of West Virginia:

21 That the Code of West Virginia, 1931, as amended, be amended
22 by adding thereto a new section, designated §11-16-11b; and that
23 §60-8-3 of said code be amended and reenacted, all to read as
24 follows:

25 **CHAPTER 11. TAXATION.**

26 **ARTICLE 16. NONINTOXICATING BEER.**

27 **§11-16-11b. One-day license to sell nonintoxicating beer;**
28 **waivers; rule-making.**

1 (a) The commissioner may issue a special one-day license to be
2 designated a Class S1 license for the retail sale of
3 nonintoxicating beer to a duly organized nonprofit corporation,
4 limited liability entity or association allowing the sale and
5 servicing of nonintoxicating beer when raising money for artistic,
6 athletic, charitable, charitable, educational or religious
7 purposes. The special license is for no longer than one day and
8 the fee is \$25. The nonintoxicating beer used during the event may
9 be donated by or purchased from a licensed retailer, distributor or
10 resident brewer. The license application shall be submitted to the
11 commissioner at least fifteen days prior to the event and contain
12 information as the commissioner may require.

13 (b) A license issued under this section and the licensee
14 remain subject to all other provisions of this article and the
15 rules and orders of the commissioner relating to the special
16 license: *Provided*, That the commissioner may by rule or order
17 provide for certain waivers or exceptions as the circumstances of
18 each event may require, including, without limitation, the right to
19 revoke or suspend any license issued pursuant to this section prior
20 to any notice or hearing, notwithstanding section twenty-four of
21 this article: *Provided, however*, That under no circumstances may
22 the provisions of subdivision (1), (2) or (3), subsection (a),
23 section eighteen of this article, be waived, nor may any exception
24 be granted with respect thereto.

25 (c) The commissioner shall propose rules for legislative
26 approval in accordance with article three, chapter twenty-nine-a of
27 this code to implement this section.

28 **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

1 **ARTICLE 8. SALE OF WINES.**

2 **§60-8-3. Licenses; fees; general restrictions.**

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

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

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

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

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

1 license;

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

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

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

17 (7) Two hundred fifty dollars per year for a private wine
18 restaurant license, and each separate restaurant from which a
19 licensee sells wine shall be separately licensed and there shall be
20 collected with respect to each location the annual license fee of
21 \$250 as herein provided;

22 (8) One hundred fifty dollars per year for a private wine spa
23 license and each separate private wine spa from which a licensee
24 sells wine shall be separately licensed and there shall be
25 collected with respect to each location the annual license fee of
26 \$150 as herein provided;

27 (9) One hundred fifty dollars per year for a wine sampling
28 license issued for a wine specialty shop under subsection (n) of

1 this section;

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

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

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

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

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

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

1 exceed the average monthly sales of nonintoxicating beer.

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

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

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

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

1 authorized to serve complimentary samples of wine in moderate
2 quantities for tasting.

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

17 A license issued under the provisions of this subsection and
18 the licensee holding the license is not subject to the provisions
19 of subsection (g) of this section.

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

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

19 (B) A license issued under this subsection and the licensee
20 holding the license is subject to all other provisions of this
21 article and the rules and orders of the commissioner relating to
22 the special license: *Provided*, That the commissioner may by rule or
23 order grant certain waivers or exceptions to those rules or orders
24 as the circumstances of each professional baseball stadium may
25 require, including, without limitation, the right to revoke or
26 suspend any license issued pursuant to this section prior to any
27 notice or hearing notwithstanding sections twenty-seven and
28 twenty-eight of this article: *Provided, however*, That under no

1 circumstances may subsection (c) or (d), section twenty of this
2 article be waived nor shall any exception be granted concerning
3 those subsections.

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

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

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

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

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

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

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

27 (o) A wine specialty shop under this article may also hold a
28 wine sampling license authorizing the wine specialty shop to

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

20 (p) The commissioner may issue special one-day licenses to
21 duly organized, nonprofit corporations, ~~and~~ associations, and
22 limited liability entities allowing the sale and serving of wine
23 when raising money for artistic, athletic, charitable, cultural,
24 educational or religious purposes. The non-refundable fee shall be
25 twenty-five dollars for the one-day license. The license
26 application shall contain information as the commissioner may
27 reasonably require and shall be submitted to the commissioner at
28 least ~~thirty~~ fifteen days prior to the event. Wines used during

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

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