

SB450 HFA Manchin, Fleischauer, Pasdon, Marshall, Barill,
Reynolds, Skaff & Craig 3-05 #1

Delegates Manchin, Fleischauer, Pasdon, Marshall, Barill,
Reynolds, Skaff & Craig move to amend the bill on page one,
immediately after the enacting clause, by striking the remainder of
the bill and inserting in lieu thereof the following:

1 That §60-1-5 of the Code of West Virginia, 1931, as amended,
2 be amended and reenacted; and that §60-8-3 of said code be amended
3 and reenacted, all to read as follows:

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

5 **ARTICLE 1. GENERAL PROVISIONS.**

6 **§60-1-5. Definitions.**

7 For the purposes of this chapter:

8 "Alcohol" shall mean ethyl alcohol whatever its origin and
9 shall include synthetic ethyl alcohol but not denatured alcohol.

10 "Beer" shall mean any beverage obtained by the fermentation of
11 barley, malt, hops or any other similar product or substitute, and
12 containing more alcohol than that of nonintoxicating beer.

13 "Nonintoxicating beer" shall mean any beverage, obtained by
14 the fermentation of barley, malt, hops or similar products or
15 substitute, and containing not more alcohol than that specified by
16 section two, article sixteen, chapter eleven of this code.

17 "Wine" shall mean any alcoholic beverage obtained by the
18 fermentation of the natural content of fruits, or other

1 agricultural products, containing sugar.

2 "Spirits" shall mean any alcoholic beverage obtained by
3 distillation and mixed with potable water and other substances in
4 solution, and includes brandy, rum, whiskey, cordials and gin.

5 "Alcoholic liquor" shall include alcohol, beer, wine and
6 spirits, and any liquid or solid capable of being used as a
7 beverage, but shall not include nonintoxicating beer.

8 "Original package" shall mean any closed or sealed container
9 or receptacle used for holding alcoholic liquor.

10 "Sale" shall mean any transfer, exchange or barter in any
11 manner or by any means, for a consideration, and shall include all
12 sales made by principal, proprietor, agent or employee.

13 "Selling" shall include solicitation or receipt of orders;
14 possession for sale; and possession with intent to sell.

15 "Person" shall mean an individual, firm, partnership, limited
16 partnership, corporation or voluntary association.

17 "Manufacture" means to distill, rectify, ferment, brew, make,
18 mix, concoct, process, blend, bottle or fill an original package
19 with any alcoholic liquor.

20 "Manufacturer" shall mean any person engaged in the
21 manufacture of any alcoholic liquor, and among others includes a
22 distiller, a rectifier, a wine maker and a brewer.

23 "Brewery" shall mean an establishment where beer is
24 manufactured or in any way prepared.

1 "Winery" shall mean an establishment where wine is
2 manufactured or in any way prepared.

3 "Distillery" shall mean an establishment where alcoholic
4 liquor other than wine or beer is manufactured or in any way
5 prepared.

6 "Public place" shall mean any place, building or conveyance to
7 which the public has, or is permitted to have access, including
8 restaurants, soda fountains, hotel dining rooms, lobbies and
9 corridors of hotels and any highway, street, lane, park or place of
10 public resort or amusement: *Provided*, That the term "public place"
11 shall not mean or include any of the above-named places or any
12 portion or portions thereof which qualify and are licensed under
13 the provisions of this chapter to sell alcoholic liquors for
14 consumption on the premises: *Provided, however, That the term*
15 "public place" shall not mean or include any legally demarcated
16 area designated solely for the consumption of beverages and freshly
17 prepared food that directly connects and adjoins any portion or
18 portions of a premises that qualifies and is licensed under the
19 provisions of this chapter to sell alcoholic liquors for
20 consumption thereupon: *Provided further, That the term "public*
21 place" shall also not include a facility constucted primarily for
22 the use of a Division I college that is a member of the National
23 Collegiate Althletic Association, or its successor, and used as a
24 football, basketball, baseball, soccer or other Division I sports

1 stadium which holds a special license to sell wine pursuant to the
2 provisions of section three, article eight of this chapter, in the
3 designated areas of sale and consumption of wine and other
4 restrictions established by that section and the terms of the
5 special license issued thereunder.

6 "State liquor store" shall mean a store established and
7 operated by the commission under this chapter for the sale of
8 alcoholic liquor in the original package for consumption off the
9 premises.

10 "An agency" shall mean a drugstore, grocery store or general
11 store designated by the commission as a retail distributor of
12 alcoholic liquor for the West Virginia Alcohol Beverage Control
13 Commissioner.

14 "Department" shall mean the organization through which the
15 commission exercises powers imposed upon it by this chapter.

16 "Commissioner" or "commission" shall mean the West Virginia
17 Alcohol Beverage Control Commissioner.

18 "Intoxicated" shall mean having one's faculties impaired by
19 alcohol or other drugs to the point where physical or mental
20 control or both are markedly diminished.

21 **ARTICLE 8. SALE OF WINES.**

22 **§60-8-3. Licenses; fees; general restrictions.**

23 (a) No person may engage in business in the capacity of a
24 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 activity
4 after his or her license has expired, been suspended or revoked.
5 No person may be licensed simultaneously as a distributor and a
6 retailer. No person, except for a winery or farm winery, may be
7 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 location
23 the annual license fee of \$2,500 as herein provided;

24 (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

1 collected with respect to each location the annual license fee of
2 \$150 as herein provided;

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

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

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

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

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

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

24 (e) No retailer may be licensed as a Class A retail dealer in

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

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

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

1 a bona fide grocery store or wine specialty shop.

2 (h) The commissioner may issue a special license for the
3 retail sale of wine at any festival or fair which is endorsed or
4 sponsored by the governing body of a municipality or a county
5 commission. Such special license shall be issued for a term of no
6 longer than ten consecutive days and the fee therefor shall be \$250
7 regardless of the term of the license unless the applicant is the
8 manufacturer of said wine on a winery or a farm winery as defined
9 in section five-a, article one of this chapter, in which event the
10 fee shall be \$50 if the event is held on the premises of the winery
11 or farm winery. The application for the license shall contain
12 information as the commissioner may reasonably require and shall be
13 submitted to the commissioner at least thirty days prior to the
14 first day when wine is to be sold at the festival or fair. A
15 winery or a farm winery licensed under this subsection may exhibit,
16 conduct tastings or sell samples, not to exceed a reasonable
17 serving of three ounces, and may sell wine samples for consumption
18 on the premises during the operation of a festival or fair:
19 *Provided*, That for licensed wineries or farm wineries at a licensed
20 festival or fair the tastings, samples and off-premises sales shall
21 occur under the hours of operation as required in this article,
22 except that on Sunday tastings, samples and off-premises sales are
23 unlawful between the hours of 2:00 a. m. and 10:00 a. m. A special
24 license issued other than to a winery or a farm winery may be

1 issued to a "wine club" as defined herein below. The festival or
2 fair committee or the governing body shall designate a person to
3 organize a club under a name which includes the name of the
4 festival or fair and the words "wine club". The license shall be
5 issued in the name of the wine club. A licensee may not commence
6 the sale of wine as provided in this subsection until the wine club
7 has at least fifty dues-paying members who have been enrolled and
8 to whom membership cards have been issued. Thereafter, new members
9 may be enrolled and issued membership cards at any time during the
10 period for which the license is issued. A wine club licensed under
11 the provisions of this subsection may sell wine only to its
12 members, and in portions not to exceed eight ounces per serving.
13 The sales shall take place on premises or in an area cordoned or
14 segregated so as to be closed to the general public, and the
15 general public shall not be admitted to the premises or area. A
16 wine club licensee under the provisions of this subsection shall be
17 authorized to serve complimentary samples of wine in moderate
18 quantities for tasting.

19 A license issued under the provisions of this subsection and
20 the licensee holding the license shall be subject to all other
21 provisions of this article and the rules and orders of the
22 commissioner relating to the special license: *Provided*, That the
23 commissioner may by rule, regulation or order provide for certain
24 waivers or exceptions with respect to the provisions, rules,

1 regulations or orders as the circumstances of each festival or fair
2 may require, including, without limitation, the right to revoke or
3 suspend any license issued pursuant to this section prior to any
4 notice or hearing notwithstanding the provisions of section twenty-
5 seven and twenty-eight of this article: *Provided, however,* That
6 under no circumstances shall the provisions of subsection (c) or
7 (d), section twenty of this article be waived nor shall any
8 exception be granted with respect thereto.

9 A license issued under the provisions of this subsection and
10 the licensee holding the license is not subject to the provisions
11 of subsection (g) of this section.

12 (I) (A) The commissioner may issue a special license for the
13 retail sale of wine in a professional baseball stadium. A license
14 to sell wine granted pursuant to this subsection entitles the
15 licensee to sell and serve wine, for consumption in a professional
16 baseball stadium. For the purpose of this subsection,
17 "professional baseball stadium" means a facility constructed
18 primarily for the use of a major or minor league baseball
19 franchisee affiliated with the National Association of Professional
20 Baseball Leagues, Inc., or its successor, and used as a major or
21 minor league baseball park. Any special license issued pursuant to
22 this subsection shall be for a term beginning on the date of
23 issuance and ending on the next following June 30, and its fee is
24 \$250 regardless of the length of the term of the license. The

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

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

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

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

20 (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 (j) of this section. Each restaurant so licensed shall

1 be charged an additional \$100 per year fee.

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

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

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

1 hours per calendar day. Licensees must purchase all wines used
2 during these events from a licensed farm winery or a licensed
3 distributor.

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

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

1 article three, chapter twenty-nine-a of this code to implement the
2 provisions of this subsection.

3 (r)(1) The commissioner may issue a special license for the
4 retail sale of wine in a college stadium. A license to sell wine
5 granted pursuant to this subsection entitles the licensee to sell
6 and serve wine for consumption in a college stadium. For the
7 purpose of this subsection, "college stadium" means a facility
8 constructed primarily for the use of a Division I college that is
9 a member of the National Collegiate Athletic Association, or its
10 successor, and used as a football, basketball, baseball, soccer or
11 other Division I sports stadium. A special license issued pursuant
12 to this subsection shall be for a term beginning on the date of its
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. The special license may be issued in the name
19 of the National Collegiate Athletic Association Division I college
20 or university or the name of the primary food and beverage vendor
21 under contract with that college or university. These sales must
22 take place within the confines of the college stadium: *Provided,*
23 That the exterior of the area where wine sales may occur are
24 surrounded by a fence or other barrier prohibiting entry except

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

5 (2) A license issued under this subsection and the licensee
6 are subject to the other requirements of this article and the rules
7 and orders of the commissioner relating to the special license:
8 Provided, That the commissioner may by rule or order grant certain
9 waivers or exceptions to those rules or orders as the circumstances
10 of each the college stadium may require, including, without
11 limitation, the right to revoke or suspend any license issued
12 pursuant to this section prior to any notice or hearing
13 notwithstanding sections twenty-seven and twenty-eight of this
14 article: Provided, however, subsection (c) or (d), section twenty
15 of this article may not be waived, nor shall any exception be
16 granted concerning those subsections.

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