

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2466**

4 (By Delegates Storch, Zatezalo, McGeehan, Weld, Fluharty,
5 Trecost, Ferro, Howell, Pasdon and D. Evans)

6
7 (Originating in the House Committee on Finance)

8 [February 27, 2015]

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
11 designated §11-16-11b; and to amend and reenact §60-6-7 and §60-8-3 of said code, all
12 relating to the sale of alcoholic beverages by certain non-profit organizations; creating a one-
13 day special license; establishing a license fee; allowing non-intoxicating beer, wine and
14 liquor from a licensed mini-distillery to be sold and served at fundraising events.

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

16 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
17 section, designated §11-16-11b; and that §60-6-7 and §60-8-3 be amended and reenacted, to read
18 as follows:

19 **CHAPTER 11. TAXATION.**

20 **ARTICLE 16. NONINTOXICATING BEER.**

21 **§11-16-11b. Special license for one-day charitable events; license fee and application; license**
22 **subject to provisions of article; exceptions.**

23 (a) The commissioner may issue a special one-day license to be designated a Class S1 license
24 for the retail sale of nonintoxicating beer or liquor to a duly organized nonprofit corporation, limited

1 liability entity or an association having received federal tax exempt status allowing the sale and
2 servng of nonintoxicating beer or liquor when raising money for artistic, athletic, charitable,
3 educational or religious purposes: *Provided*, That the liquor served and sold was produced at a mini-
4 distillery licensed for retail sale under chapter sixty of this code. The special license may be issued
5 for a term no longer than one day. The nonrefundable fee is \$25 for the one-day license. The license
6 application shall contain information the commissioner requires and shall be submitted to the
7 commissioner at least fifteen days prior to the event. Nonintoxicating beer or liquor used during the
8 event may be donated by or purchased from a licensed retailer, distributor, mini-distillery or resident
9 brewer.

10 (b) A license issued under the provisions of this section and the licensee holding the license
11 is subject to all other provisions of this article and the rules and orders of the commissioner relating
12 to the special license: *Provided*, That the commissioner may by rule or order allow waivers or
13 exceptions with respect to those provisions, rules or orders as the circumstances of each event
14 requires, including, without limitation, the right to revoke or suspend any license issued pursuant to
15 this section prior to any notice or hearing, notwithstanding the provisions of section twenty-four of
16 this article: *Provided, however*, That under no circumstances may the provisions of subdivisions (1),
17 (2) or (3), subsection (a), section eighteen of this article be waived or an exception granted with
18 respect thereto.

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

20 **ARTICLE 6. MISCELLANEOUS PROVISIONS.**

21 **§60-6-7. Specific acts forbidden; indictment.**

22 A person ~~shall~~ may not:

23 (1) Manufacture or sell in this state without a license any alcoholic liquor except as permitted

1 by this article:

2 (2) Aid or abet in the manufacture or sale of alcoholic liquor without a license except as
3 permitted by this article;

4 (3) Sell without a license any alcoholic liquor other than permitted by this article;

5 (4) Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude,
6 unrectified or impure form of ethyl alcohol, or other foreign or deleterious substance or liquid;

7 (5) Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has
8 been sold at retail in this state;

9 (6) Advertise any alcoholic liquor in this state except in accordance with the rules and
10 regulations of the commissioner; or

11 (7) Distribute, deal in, process, or use crowns, stamps or seals required under the authority
12 of this chapter, except in accordance with the rules and regulations prescribed by the commissioner.

13 A person who violates any provision of this section shall be guilty of a misdemeanor and,
14 upon conviction shall be fined not less than \$50 nor more than \$500, or confined in jail not less than
15 thirty days nor more than one year or both such fine and imprisonment, for the first offense. Upon
16 conviction of a second or subsequent offense, the court may in its discretion impose a penalty of
17 confinement in ~~the penitentiary~~ a state correctional facility for a period not to exceed three years.

18 An indictment for any first violation of subdivisions (1), (2) and (3) of this section, or any
19 of them, shall be sufficient if in form or effect as follows:

20 State of West Virginia

21 County of, to wit:

22 The Grand Jurors of the State of West Virginia, in and for the body of the County of,
23 upon their oaths present that, on the day of, ~~1920~~....., in the said County of

1 , did unlawfully, without a state license and without authorization under the Alcohol Beverage
2 Control Act, manufacture and sell, and aid and abet in the manufacture and sale of a quantity of
3 alcoholic liquor, against the peace and dignity of the state.

4 Any indictment under this section shall otherwise be in conformity with section one, article
5 nine, chapter sixty-two of the code.

6 **ARTICLE 8. SALE OF WINES.**

7 **§60-8-3. Licenses; fees; general restrictions.**

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

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

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

22 (2) Twenty-five hundred dollars per year for a distributor's license and each separate
23 warehouse or other facility from which a distributor sells, transfers or delivers wine shall be

1 separately licensed and there shall be collected with respect to each location the annual license fee
2 of \$2,500 as herein provided;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (i) (A) The commissioner may issue a special license for the retail sale of wine in a
23 professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles the

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

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

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

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

23 (k) With respect to subsections (h), (i), (j), (o) and (p) of this section, the commissioner shall

1 ~~promulgate~~ propose legislative rules in accordance with the provisions of chapter twenty-nine-a of
2 this code with regard to the form of the applications, the suitability of both the applicant and location
3 of the licensed premises and other legislative rules deemed necessary to carry the provisions of the
4 subsections into effect.

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

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

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

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

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

4 (p) The commissioner may issue special one-day licenses to duly organized, nonprofit
5 corporations and associations having received federal tax exempt status allowing the sale and serving
6 of wine when raising money for artistic, athletic, charitable, educational or religious purposes. The
7 nonrefundable fee is \$25 for the one-day license. The license application shall contain information
8 as the commissioner may reasonably require and shall be submitted to the commissioner at least
9 ~~thirty~~ fifteen days prior to the event. Wines used during these events may be donated by or
10 purchased from a licensed retailer, a distributor or a farm winery. Under no circumstances may the
11 provision of subsection (c), section twenty of this article be waived ~~nor~~ or may ~~any~~ an exception be
12 granted with respect thereto.

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

21 (r) (1) The commissioner may issue a special license for the retail sale of wine in a college
22 stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and
23 serve wine for consumption in a college stadium. For the purpose of this subsection, “college

1 stadium” means a facility constructed primarily for the use of a Division I college that is a member
2 of the National Collegiate Athletic Association, or its successor, and used as a football, basketball,
3 baseball, soccer or other Division I sports stadium. A special license issued pursuant to this
4 subsection shall be for a term beginning on the date of its issuance and ending on the next following
5 June 30, and its fee is \$250 regardless of the length of the term of the license. The application for
6 the special license shall contain information as the commissioner may reasonably require and must
7 be submitted to the commissioner at least thirty days prior to the first day when wine is to be sold.
8 The special license may be issued in the name of the National Collegiate Athletic Association
9 Division I college or university or the name of the primary food and beverage vendor under contract
10 with that college or university. These sales must take place within the confines of the college
11 stadium: *Provided*, That the exterior of the area where wine sales may occur are surrounded by a
12 fence or other barrier prohibiting entry except upon the college or university’s express permission,
13 and under the conditions and restrictions established by the college or university, so that the wine
14 sales area is closed to free and unrestricted entry by the general public.

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

23 (3) The commissioner may propose rules for legislative approval in accordance with article

1 three, chapter twenty-nine-a of this code to implement this subsection.