

ENGROSSED
COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 384

(By Senators D. Hall, Prezioso, Takubo,
Stollings and Beach)

[Originating in the Committee on
Government Organization;
reported February 17, 2015.]

A BILL to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating to permitting sale of wine by wine specialty shop in a county, magisterial district or municipality that has not elected to permit sale of wine or alcohol beverages.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. SALE OF WINES.

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

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

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1 farm winery, may be licensed simultaneously as a supplier and a retailer. No person may be licensed
2 simultaneously as a supplier and a private wine bed and breakfast, private wine restaurant or a
3 private wine spa. No person may be licensed simultaneously as a distributor and a private wine bed
4 and breakfast, a private wine restaurant or a private wine spa. No person may be licensed
5 simultaneously as a retailer and a private wine bed and breakfast, a private wine restaurant or a
6 private wine spa.

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

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

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

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

15 (4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any
16 other licensing fees paid by a winery or retailer holding a license, except for the amount of the
17 license fee and the restriction to sales of winery or farm winery wines, a winery or farm winery
18 acting as a wine specialty shop retailer is subject to all other provisions of this article which are
19 applicable to a wine specialty shop retailer as defined in section two of this article: Provided, That
20 notwithstanding any provision of this code to the contrary, the commissioner may issue a license to
21 a wine specialty shop consistent with the provisions of section two, article eight, chapter six of this
22 code that is located on the premises of an existing resort area in a county that has elected not to

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1 permit the sale of wine or alcohol beverages. "Resort area" shall mean an area encompassing one
2 or more resort hotels, and attachments of the resort hotels and the traditional, immediate grounds of
3 such resort hotels.

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

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

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

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

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

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

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

21 (12) Three hundred dollars per year for a multicapacity winery or farm winery license which
22 shall enable the holder to operate as a retailer, wine specialty shop, supplier and direct shipper

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1 without obtaining an individual license for each capacity.

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

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

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

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

22 (g) A retailer who has more than one place of retail business shall obtain a license for each

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1 separate retail establishment. A retailer's license may be issued only to the proprietor or owner of
2 a bona fide grocery store or wine specialty shop.

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

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1 to whom membership cards have been issued. Thereafter, new members may be enrolled and issued
2 membership cards at any time during the period for which the license is issued. A wine club licensed
3 under the provisions of this subsection may sell wine only to its members, and in portions not to
4 exceed eight ounces per serving. The sales shall take place on premises or in an area cordoned or
5 segregated so as to be closed to the general public and the general public shall not be admitted to the
6 premises or area. A wine club licensee under the provisions of this subsection ~~shall be~~ is authorized
7 to serve complimentary samples of wine in moderate quantities for tasting.

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

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

19 (i) (A) The commissioner may issue a special license for the retail sale of wine in a
20 professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles the
21 licensee to sell and serve wine for consumption in a professional baseball stadium. For the purpose
22 of this subsection, “professional baseball stadium” means a facility constructed primarily for the use

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

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

22 (C) The commissioner has the authority to propose rules for legislative approval in

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

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

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

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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

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1 alcoholic liquor or the use of drugs. The wine specialty shop shall notify and secure permission from
2 the commissioner for all wine sampling events one month prior to the event. Wine sampling events
3 may not exceed six hours per calendar day. Licensees must purchase all wines used during these
4 events from a licensed farm winery or a licensed distributor.

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

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

22 (r) (1) The commissioner may issue a special license for the retail sale of wine in a college

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

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

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1 *however*, That subsection (c) or (d), section twenty of this article may not be waived, nor ~~shall any~~
2 may an exception be granted concerning those subsections.

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