

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 384**

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

5 _____
6 [Originating in the Committee on Government Organization;
7 reported February 17, 2015.]
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11 A BILL to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating to
12 permitting sale of wine by wine specialty shop in a county, magisterial district or
13 municipality that has not elected to permit sale of wine or alcohol beverages.

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

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

17 **ARTICLE 8. SALE OF WINES.**

18 **§60-8-3. Licenses; fees; general restrictions.**

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

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 that is located in a county, magisterial district or municipality that has not
22 elected to permit the sale of wine or alcohol beverages;

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

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

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

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

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

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

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

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

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

23 (d) No retailer may be licensed as a private club as provided by article seven of this chapter,

1 except as provided by subsection (k) of this section.

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

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

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

20 (h) The commissioner may issue a special license for the retail sale of wine at any festival
21 or fair which is endorsed or sponsored by the governing body of a municipality or a county
22 commission. Such special license shall be issued for a term of no longer than ten consecutive days
23 and the fee therefor shall be \$250 regardless of the term of the license unless the applicant is the

1 manufacturer of said wine on a winery or a farm winery as defined in section five-a, article one of
2 this chapter, in which event the fee shall be \$50 if the event is held on the premises of the winery or
3 farm winery. The application for the license shall contain information as the commissioner may
4 reasonably require and shall be submitted to the commissioner at least thirty days prior to the first
5 day when wine is to be sold at the festival or fair. A winery or a farm winery licensed under this
6 subsection may exhibit, conduct tastings or sell samples, not to exceed a reasonable serving of three
7 ounces, and may sell wine samples for consumption on the premises during the operation of a
8 festival or fair: *Provided*, That for licensed wineries or farm wineries at a licensed festival or fair the
9 tastings, samples and off-premises sales shall occur under the hours of operation as required in this
10 article, except that on Sunday tastings, samples and off-premises sales are unlawful between the
11 hours of 2:00 a. m. and 10:00 a. m. A special license issued other than to a winery or a farm winery
12 may be issued to a “wine club” as defined herein below. The festival or fair committee or the
13 governing body shall designate a person to organize a club under a name which includes the name
14 of the festival or fair and the words “wine club”. The license shall be issued in the name of the wine
15 club. A licensee may not commence the sale of wine as provided in this subsection until the wine
16 club has at least fifty dues-paying members who have been enrolled and to whom membership cards
17 have been issued. Thereafter, new members may be enrolled and issued membership cards at any
18 time during the period for which the license is issued. A wine club licensed under the provisions of
19 this subsection may sell wine only to its members and in portions not to exceed eight ounces per
20 serving. The sales shall take place on premises or in an area cordoned or segregated so as to be
21 closed to the general public and the general public shall not be admitted to the premises or area. A
22 wine club licensee under the provisions of this subsection shall be authorized to serve complimentary
23 samples of wine in moderate quantities for tasting.

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

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

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

1 vendor under contract with the baseball franchisee. These sales must take place within the confines
2 of the professional baseball stadium, provided that the exterior of the area where wine sales may
3 occur are surrounded by a fence or other barrier prohibiting entry except upon the franchisee's
4 express permission, and under the conditions and restrictions established by the franchisee so that
5 the wine sales area is closed to free and unrestricted entry by the general public.

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

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

16 (j) A license to sell wine granted to a private wine bed and breakfast, private wine restaurant,
17 private wine spa or a private club under the provisions of this article entitles the operator to sell and
18 serve wine, for consumption on the premises of the licensee, when the sale accompanies the serving
19 of food or a meal to its members and their guests in accordance with the provisions of this article:
20 *Provided*, That a licensed private wine bed and breakfast, private wine restaurant, private wine spa
21 or a private club may permit a person over twenty-one years of age to purchase wine, consume wine
22 and recork or reseal, using a tamper resistant cork or seal, up to two separate bottles of unconsumed
23 wine in conjunction with serving of food or a meal to its members and their guests in accordance

1 with the provisions of this article and in accordance with regulations promulgated by the
2 commissioner for the purpose of consumption of said wine off premises: *Provided, however,* That
3 for this article, food or a meal provided by the private licensee means that the total food purchase,
4 excluding beverage purchases, taxes, gratuity or other fees is at least \$15: *Provided further,* That
5 a licensed private wine restaurant or a private club may offer for sale for consumption off the
6 premises, sealed bottles of wine to its customers provided that no more than one bottle is sold per
7 each person over twenty-one years of age, as verified by the private wine restaurant or private club,
8 for consumption off the premises. Such licensees are authorized to keep and maintain on their
9 premises a supply of wine in quantities as may be appropriate for the conduct of operations thereof.
10 Any sale of wine so made shall be subject to all restrictions set forth in section twenty of this article.
11 A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as
12 provided by article sixteen, chapter eleven of this code.

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

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

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

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

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

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

1 thereto.

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

10 (r) (1) The commissioner may issue a special license for the retail sale of wine in a college
11 stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and
12 serve wine for consumption in a college stadium. For the purpose of this subsection, “college
13 stadium” means a facility constructed primarily for the use of a Division I college that is a member
14 of the National Collegiate Athletic Association, or its successor, and used as a football, basketball,
15 baseball, soccer or other Division I sports stadium. A special license issued pursuant to this
16 subsection shall be for a term beginning on the date of its issuance and ending on the next following
17 June 30 and its fee is \$250 regardless of the length of the term of the license. The application for
18 the special license shall contain information as the commissioner may reasonably require and must
19 be submitted to the commissioner at least thirty days prior to the first day when wine is to be sold.
20 The special license may be issued in the name of the National Collegiate Athletic Association
21 Division I college or university or the name of the primary food and beverage vendor under contract
22 with that college or university. These sales must take place within the confines of the college
23 stadium: *Provided*, That the exterior of the area where wine sales may occur are surrounded by a

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

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

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

(NOTE: The purpose of this bill is to permit the sale of wine by a wine specialty shop in a county that has not elected to permit the sale of wine or alcohol beverages.)

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