

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 288**

BY SENATORS TRUMP, BLAIR, TAKUBO, WALTERS,

ROMANO AND PALUMBO

[Introduced January 14, 2016; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §11-16-11b; and to amend and reenact §60-8-3 of said code, all relating to  
 3 creating a one-day special license for charitable events to sell nonintoxicating beer and  
 4 wine; setting fee for license; and authorizing commissioner to waive certain restrictions by  
 5 rule or order.

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

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

**CHAPTER 11. TAXATION.**

**ARTICLE 16. NONINTOXICATING BEER.**

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

1 The commissioner may issue a special one-day license to be designated a Class S1  
 2 license for the retail sale of nonintoxicating beer to a duly organized nonprofit corporation, limited  
 3 liability entity or an association having received federal tax exempt status allowing the sale and  
 4 selling of nonintoxicating beer when raising money for artistic, athletic, charitable, educational or  
 5 religious purposes. The special license may be issued for a term no longer than one day. The  
 6 nonrefundable fee is \$25 for one license. The license application shall contain information the  
 7 commissioner requires and shall be submitted to the commissioner at least fifteen days prior to  
 8 the event. Nonintoxicating beer used during the event may be donated by or purchased from a  
 9 licensed retailer, distributor or resident brewer.

10 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  
15 to this section prior to any notice or hearing notwithstanding the provisions of section twenty-four  
16 of this article: *Provided, however,* That under no circumstances may the provisions of subdivision  
17 (1), (2) or (3), subsection (a), section eighteen of this article be waived or an exception granted  
18 with respect thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

69 (h) The commissioner may issue a special license for the retail sale of wine at any festival  
70 or fair which is endorsed or sponsored by the governing body of a municipality or a county  
71 commission. ~~Such~~ The special license ~~shall~~ may be issued for ~~a term of~~ no longer than ten  
72 consecutive days and the fee therefor ~~shall be~~ is \$250 regardless of the term of the license unless  
73 the applicant is the manufacturer of ~~said~~ the wine on a winery or a farm winery as defined in  
74 section five-a, article one of this chapter, in which event the fee ~~shall be~~ is \$50 if the event is held  
75 on the premises of the winery or farm winery. The application for the license shall contain  
76 information as the commissioner may reasonably require and shall be submitted to the  
77 commissioner at least thirty days prior to the first day when wine is to be sold at the festival or  
78 fair. A winery or a farm winery licensed under this subsection may exhibit, conduct tastings or sell  
79 samples, not to exceed a reasonable serving of three ounces, and may sell wine samples for  
80 consumption on the premises during the operation of a festival or fair: *Provided*, That for licensed  
81 wineries or farm wineries at a licensed festival or fair the tastings, samples and off-premises sales  
82 shall occur under the hours of operation as required in this article, except that on Sunday tastings,  
83 samples and off-premises sales are unlawful between the hours of 2:00 a. m. and 10:00 a. m. A  
84 special license issued other than to a winery or a farm winery may be issued to a "wine club" as  
85 defined herein below. The festival or fair committee or the governing body shall designate a  
86 person to organize a club under a name which includes the name of the festival or fair and the  
87 words "wine club". The license shall be issued in the name of the wine club. A licensee may not  
88 commence the sale of wine as provided in this subsection until the wine club has at least fifty  
89 dues-paying members who have been enrolled and to whom membership cards have been  
90 issued. Thereafter, new members may be enrolled and issued membership cards at any time  
91 during the period for which the license is issued. A wine club licensed under the provisions of this  
92 subsection may sell wine only to its members, and in portions not to exceed eight ounces per  
93 serving. The sales shall take place on premises or in an area cordoned or segregated so as to be  
94 closed to the general public, and the general public shall not be admitted to the premises or area.

95 A wine club licensee under the provisions of this subsection ~~shall be~~ is authorized to serve  
96 complimentary samples of wine in moderate quantities for tasting.

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

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

109 (i) (A) The commissioner may issue a special license for the retail sale of wine in a  
110 professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles  
111 the licensee to sell and serve wine, for consumption in a professional baseball stadium. For the  
112 purpose of this subsection, "professional baseball stadium" means a facility constructed primarily  
113 for the use of a major or minor league baseball franchisee affiliated with the National Association  
114 of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league  
115 baseball park. Any special license issued pursuant to this subsection shall be for a term beginning  
116 on the date of issuance and ending on the next following June 30 and its fee is \$250 regardless  
117 of the length of the term of the license. The application for the special license shall contain  
118 information as the commissioner may reasonably require and must be submitted to the  
119 commissioner at least thirty days prior to the first day when wine is to be sold at the professional  
120 baseball stadium. The special license may be issued in the name of the baseball franchisee or

121 the name of the primary food and beverage vendor under contract with the baseball franchisee.  
122 These sales must take place within the confines of the professional baseball stadium, provided  
123 that the exterior of the area where wine sales may occur are surrounded by a fence or other  
124 barrier prohibiting entry except upon the franchisee's express permission, and under the  
125 conditions and restrictions established by the franchisee so that the wine sales area is closed to  
126 free and unrestricted entry by the general public.

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

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

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



147 with ~~regulations~~ rules promulgated by the commissioner for the purpose of consumption of ~~said~~  
148 the wine off premises: *Provided, however,* That for this article, food or a meal provided by the  
149 private licensee means that the total food purchase, excluding beverage purchases, taxes,  
150 gratuity or other fees is at least \$15: *Provided further,* That a licensed private wine restaurant or  
151 a private club may offer for sale for consumption off the premises sealed bottles of wine to its  
152 customers provided that no more than one bottle is sold per each person over twenty-one years  
153 of age, as verified by the private wine restaurant or private club, for consumption off the premises.  
154 ~~Such~~ The licensees are authorized to keep and maintain on their premises a supply of wine in  
155 quantities as may be appropriate for the conduct of operations thereof. Any sale of wine so made  
156 ~~shall be~~ is subject to all restrictions set forth in section twenty of this article. A private wine  
157 restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by  
158 article sixteen, chapter eleven of this code.

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

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

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

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

172 (o) A wine specialty shop under this article may also hold a wine sampling license

173 authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine  
174 specialty shop location during regular hours of business. The wine specialty shop may serve up  
175 to three complimentary samples of wine, consisting of no more than one ounce each, to any one  
176 consumer in one day. Persons serving the complimentary samples must be twenty-one years of  
177 age and an authorized representative of the licensed wine specialty shop, winery, farm winery or  
178 a representative of a distributor or registered supplier. Distributor and supplier representatives  
179 attending wine sampling events must be registered with the commissioner. No licensee, employee  
180 or representative may furnish, give or serve complimentary samples of wine to any person less  
181 than twenty-one years of age or to a person who is physically incapacitated due to the  
182 consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and  
183 secure permission from the commissioner for all wine sampling events one month prior to the  
184 event. Wine sampling events may not exceed six hours per calendar day. Licensees must  
185 purchase all wines used during these events from a licensed farm winery or a licensed distributor.

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

195 (q) The commissioner may issue special licenses to heritage fairs and festivals allowing  
196 the sale, serving and sampling of wine from a licensed farm winery. The license application shall  
197 contain information required by the commissioner and shall be submitted to the commissioner at  
198 least thirty days prior to the event. Wines used during these events may be donated by or

199 purchased from a licensed farm winery. Under no circumstances may the provision of subsection  
200 (c), section twenty of this article be waived nor may any exception be granted with respect thereto.  
201 The commissioner shall propose rules for legislative approval in accordance with article three,  
202 chapter twenty-nine-a of this code to implement the provisions of this subsection.

203 (r) (1) The commissioner may issue a special license for the retail sale of wine in a college  
204 stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and  
205 serve wine for consumption in a college stadium. For the purpose of this subsection, "college  
206 stadium" means a facility constructed primarily for the use of a Division I college that is a member  
207 of the National Collegiate Athletic Association, or its successor, and used as a football, basketball,  
208 baseball, soccer or other Division I sports stadium. A special license issued pursuant to this  
209 subsection shall be for a term beginning on the date of its issuance and ending on the next  
210 following June 30 and its fee is \$250 regardless of the length of the term of the license. The  
211 application for the special license shall contain information as the commissioner may reasonably  
212 require and must be submitted to the commissioner at least thirty days prior to the first day when  
213 wine is to be sold. The special license may be issued in the name of the National Collegiate  
214 Athletic Association Division I college or university or the name of the primary food and beverage  
215 vendor under contract with that college or university. These sales must take place within the  
216 confines of the college stadium: *Provided*, That the exterior of the area where wine sales may  
217 occur are surrounded by a fence or other barrier prohibiting entry except upon the college or  
218 university's express permission, and under the conditions and restrictions established by the  
219 college or university, so that the wine sales area is closed to free and unrestricted entry by the  
220 general public.

221 (2) A license issued under this subsection and the licensee are subject to the other  
222 requirements of this article and the rules and orders of the commissioner relating to the special  
223 license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions  
224 to those rules or orders as the circumstances of each college stadium may require, including,

225 without limitation, the right to revoke or suspend any license issued pursuant to this section prior  
226 to any notice or hearing notwithstanding sections twenty-seven and twenty-eight of this article:  
227 *Provided, however,* That subsection (c) or (d), section twenty of this article may not be waived,  
228 nor ~~shall any~~ may an exception be granted concerning those subsections.

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

NOTE: The purpose of this bill is to authorize a one-day special license for charitable events to sell nonintoxicating beer similar to a wine provision in W. Va. Code §60-8-3 with a small prorated \$25 fee (as compared to the ten-day license at \$250) to cover the costs of licensing and inspection. The bill would also add the \$25 fee to the charitable wine license already in W. Va. Code §60-8-3. The West Virginia Alcohol Beverage Control Administration annually receives numerous requests for these licenses from charitable organizations and grants them for wine, but there is no such license for nonintoxicating beer.

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