

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 3002**

BY DELEGATES HILL, MARTIN, CAPUTO, FLEISCHAUER,

STATLER AND HAMILTON

[Introduced March 14, 2017; Referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating  
 2 to special licenses for the retail sale of wine at festivals or fairs; and making the license  
 3 period one year.

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

1 That §60-8-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted  
 2 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  
 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 for a direct shipper's license who ships and sells wine,  
42 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 less 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 wine  
60 specialty shop shall organize a wine taster's club, which has at least fifty duly elected or approved  
61 dues-paying members in good standing. Such club shall meet on the wine specialty shop's  
62 premises not more than one time per week and shall either meet at a time when the premises are  
63 closed to the general public, or shall meet in a separate segregated facility on the premises to  
64 which the general public is not admitted. Attendance at tastings shall be limited to duly elected or  
65 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~~ festivals or fairs which ~~is~~ are endorsed or sponsored by the governing body of a municipality

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

97 moderate quantities for tasting.

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

149 licensee means that the total food purchase, excluding beverage purchases, taxes, gratuity or  
150 other fees is at least \$15: *Provided further*, That a licensed private wine restaurant or a private  
151 club may offer for sale for consumption off the premises, sealed bottles of wine to its customers  
152 provided that no more than one bottle is sold per each person over twenty-one years of age, as  
153 verified by the private wine restaurant or private club, for consumption off the premises. Such  
154 licensees are authorized to keep and maintain on their premises a supply of wine in quantities as  
155 may be appropriate for the conduct of operations thereof. Any sale of wine so made shall be  
156 subject to all restrictions set forth in section twenty of this article. A private wine restaurant may  
157 also be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen,  
158 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 legislative rules in accordance with the provisions of chapter twenty-nine-a of  
161 this code with regard to the form of the applications, the suitability of both the applicant and  
162 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 legislative rules in accordance with the provisions  
165 of chapter twenty-nine-a of this code to allow restaurants to serve wine with meals, and to sell  
166 wine by the bottle for off-premises consumption as provided in subsection (j) of this section. Each  
167 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 allowing the sale and serving of wine when raising money for  
188 athletic, charitable, educational or religious purposes. The license application shall contain  
189 information as the commissioner may reasonably require and shall be submitted to the  
190 commissioner at least thirty days prior to the event. Wines used during these events may be  
191 donated by or purchased from a licensed retailer, a distributor or a farm winery. Under no  
192 circumstances may the provision of subsection (c), section twenty of this article be waived nor  
193 may any exception be granted with respect thereto.

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

201 chapter twenty-nine-a of this code to implement the provisions of this subsection.

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

220 (2) A license issued under this subsection and the licensee are subject to the other  
221 requirements of this article and the rules and orders of the commissioner relating to the special  
222 license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions  
223 to those rules or orders as the circumstances of each the college stadium may require, including,  
224 without limitation, the right to revoke or suspend any license issued pursuant to this section prior  
225 to any notice or hearing notwithstanding sections twenty-seven and twenty-eight of this article:  
226 *Provided, however*, That subsection (c) or (d), section twenty of this article may not be waived,

227 nor shall any exception be granted concerning those subsections.

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

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

NOTE: The purpose of this bill is to make the special license term for the retail sale of wine at festivals or fairs one year.

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