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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

House Bill No. 2960

(By Mr. Speaker, Mr. Kiss, and Delegates
Ashley, Argento, Boggs, Stemple, Michael,
Campbell, Stalnaker, Schadler and Hall)



Passed April 6, 2005

In Effect July 1, 2005

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E N R O L L E D

H. B. 2960

(BY MR. SPEAKER, MR. KISS, AND DELEGATES
ASHLEY, ARGENTO, BOGGS, STEMPLE, MICHAEL,
CAMPBELL, STALNAKER, SCHADLER AND HALL)

[Passed April 6, 2005; in effect July 1, 2005.]

AN ACT to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating to permitting licensed restaurants to sell sealed bottles of wine produced by a West Virginia winery for consumption off the premises.

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) Except as to farm wineries as defined by section five-a,
- 2 article one of this chapter, no person may engage in business in
- 3 the capacity of a distributor, retailer or private wine restaurant
- 4 without first obtaining a license from the Commissioner, nor
- 5 shall a person continue to engage in any such activity after his

6 or her license has expired, been suspended or revoked. No
7 person may be licensed simultaneously as a distributor and a
8 retailer, as a distributor and a private wine restaurant, or as a
9 retailer and a private wine restaurant.

10 (b) The Commissioner shall collect an annual fee for
11 licenses issued under this article, as follows:

12 (1) Twenty-five hundred dollars per year for a distributor's
13 license and each separate warehouse or other facility from
14 which a distributor sells, transfers or delivers wine shall be
15 separately licensed and there shall be collected with respect to
16 each such location the annual license fee of twenty-five
17 hundred dollars as herein provided.

18 (2) One hundred fifty dollars per year for a retailer's
19 license.

20 (3) Fifty dollars per year for a wine tasting license.

21 (4) Fifty dollars for each sales representative of or em-
22 ployed by a licensed distributor.

23 (5) Two hundred fifty dollars per year for a private wine
24 restaurant license, and each separate restaurant from which a
25 licensee sells wine shall be separately licensed and there shall
26 be collected with respect to each such location the annual
27 license fee of two hundred fifty dollars as herein provided.

28 (6) Twenty-five dollars per year for a West Virginia wine
29 retailer's license, and each separate retail outlet from which a
30 West Virginia wine retailer sells West Virginia wine shall be
31 separately licensed and there shall be collected with respect to
32 each such location the annual license fee of twenty-five dollars
33 as herein provided. The holder of such a license may sell no
34 wines except those produced by West Virginia Farm Wineries
35 as defined by section five-a, article one of this chapter. Except

36 for the amount of the license fee and the restriction to sales of
37 West Virginia wines, a West Virginia wine retailer is subject to
38 all other provisions of this article which are applicable to a
39 retailer as defined in section two of this article.

40 (c) The license period shall begin on the first day of July of
41 each year and end on the thirtieth day of June of the following
42 year, and if granted for a less period, the same shall be com-
43 puted semiannually in proportion to the remainder of the fiscal
44 year.

45 (d) No retailer may be licensed as a private club as provided
46 by article seven of this chapter.

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

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

68 limited to duly elected or approved dues paying members and
69 their guests.

70 (g) A retailer who has more than one place of retail
71 business shall obtain a license for each separate retail establish-
72 ment. A retailer's license may be issued only to the proprietor
73 or owner of a bona fide grocery store or wine specialty shop.

74 (h) The Commissioner may issue a special license for the
75 retail sale of wine at any festival or fair which is endorsed or
76 sponsored by the governing body of a municipality or a county
77 Commission. Such special license shall be issued for a term of
78 no longer than ten consecutive days and the fee therefor shall be
79 two hundred fifty dollars regardless of the term of the license
80 unless the applicant is the manufacturer of said wine on a farm
81 winery as defined in section five-a, article one of this chapter,
82 in which event the fee shall be twenty-five dollars. The applica-
83 tion for such license shall contain such information as the
84 Commissioner may reasonably require and shall be submitted
85 to the Commissioner at least thirty days prior to the first day
86 when wine is to be sold at such festival or fair. A farm winery
87 licensed under this subsection may exhibit, conduct tastings, not
88 to exceed a reasonable serving, and may sell wine only for
89 consumption off the premises of such festival or fair. A special
90 license issued other than to a farm winery may be issued to a
91 "wine club" as defined hereinbelow. The festival or fair
92 committee or the governing body shall designate a person to
93 organize a club under a name which includes the name of the
94 festival or fair and the words "wine club". The license shall be
95 issued in the name of the wine club. A licensee may not
96 commence the sale of wine as provided for in this subsection
97 until the wine club has at least fifty dues paying members who
98 have been enrolled and to whom membership cards have been
99 issued. Thereafter, new members may be enrolled and issued
100 membership cards at any time during the period for which the
101 license is issued. A wine club licensed under the provisions of

102 this subsection may sell wine only to its members, and in
103 portions not to exceed eight ounces per serving. Such sales shall
104 take place on premises or in an area cordoned or segregated so
105 as to be closed to the general public, and the general public
106 shall not be admitted to such premises or area. A wine club
107 licensee under the provisions of this subsection shall be
108 authorized to serve complimentary samples of wine in moderate
109 quantities for tasting.

110 A license issued under the provisions of this subsection and
111 the licensee holding such license shall be subject to all other
112 provisions of this article and the rules, regulations and orders of
113 the Commissioner relating to such special license: *Provided,*
114 That the Commissioner may by rule, regulation, or order
115 provide for certain waivers or exceptions with respect to such
116 provisions, rules, regulations, or orders as the circumstances of
117 each such festival or fair may require, including, without
118 limitation, the right to revoke or suspend any license issued
119 pursuant to this section prior to any notice or hearing notwith-
120 standing the provisions of section twelve of this article:
121 *Provided, however,* That under no circumstances shall the
122 provisions of subsection (c) or (d), section twenty of this article
123 be waived nor shall any exception be granted with respect
124 thereto.

125 A license issued under the provisions of this subsection and
126 the licensee holding such license shall not be subject to the
127 provisions of subsection (g) of this section.

128 (i) A license to sell wine granted to a private wine restau-
129 rant under the provisions of this article entitles the operator to
130 sell and serve wine, for consumption on the premises of the
131 licensee, when such sale accompanies the serving of food or a
132 meal to its members and their guests in accordance with the
133 provisions of this article: *Provided,* That a licensed restaurant
134 may offer for sale off the premises, sealed bottles of wine

135 produced by a West Virginia Farm winery. Such licensees are
136 authorized to keep and maintain on their premises a supply of
137 wine in such quantities as may be appropriate for the conduct
138 of operations thereof. Any sale of wine so made shall be subject
139 to all restrictions set forth in section twenty of this article. A
140 private wine restaurant may also be licensed as a Class A retail
141 dealer in nonintoxicating beer as provided by article sixteen,
142 chapter eleven of this code.

143 (j) With respect to subsections (h) and (i) of this section, the
144 Commissioner shall promulgate legislative rules in accordance
145 with the provisions of chapter twenty-nine-a of this code with
146 regard to the form of the applications, the suitability of both the
147 applicant and location of the licensed premises and such other
148 legislative rules deemed necessary to carry the provisions of
149 such subsections into effect.

150 (k) The Commissioner shall promulgate legislative rules in
151 accordance with the provisions of chapter twenty-nine-a of this
152 code to allow restaurants to serve West Virginia wine with
153 meals, but not to sell the wine by the bottle. Each restaurant so
154 licensed shall be charged a fee less than that charged for a wine
155 license to a retail outlet, such fees to be set forth in the afore-
156 mentioned rules promulgated pursuant to this subsection.

157 (l) The Commissioner shall establish guidelines to permit
158 West Virginia wines to be sold in state stores.

159 (m) Farm wineries as defined in section one-a of this article
160 may advertise off premises as provided in section seven, article
161 twenty-two, chapter seventeen and in any other media, includ-
162 ing, but not limited to, newspaper, radio, television, magazines
163 and direct mail solicitation.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy White
Chairman Senate Committee

Richard Beery
Chairman House Committee

Originating in the House.

In effect July 1, 2005.

Darrell Holmes
Clerk of the Senate

Gregg M. Day
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

Robert Skiss
Speaker of the House of Delegates

The within *is approved* this the *18th*
day of *April*, 2005.

[Signature]
Governor

**PRESENTED TO THE
GOVERNOR**

Date 4/12/05

Time 3:00 pm