

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013



ENROLLED

Senate Bill No. 470

(BY SENATORS MILLER, WILLIAMS, STOLLINGS, KESSLER
(MR. PRESIDENT) AND BEACH)

[PASSED APRIL 13, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]

2013 MAY -2 PM 3:32
SECRETARY OF STATE
WEST VIRGINIA

SB 470

FILED

2013 MAY -2 PM 3: 32

ENROLLED

WEST VIRGINIA
SENATE OF STATE

Senate Bill No. 470

(BY SENATORS MILLER, WILLIAMS, STOLLINGS, KESSLER
(MR. PRESIDENT) AND BEACH)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating generally to permitting wineries and farm wineries to sell samples and wine at licensed fairs or festivals on Sunday mornings; and limiting samples to three ounces.

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

9 except for a winery or farm winery, may be licensed
10 simultaneously as a supplier and a retailer. No person may be
11 licensed simultaneously as a supplier and a private wine bed
12 and breakfast, private wine restaurant or a private wine spa.
13 No person may be licensed simultaneously as a distributor
14 and a private wine bed and breakfast, a private wine
15 restaurant or a private wine spa. No person may be licensed
16 simultaneously as a retailer and a private wine bed and
17 breakfast, a private wine restaurant or a private wine spa.

18 (b) The commissioner shall collect an annual fee for
19 licenses issued under this article, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

78 (e) No retailer may be licensed as a Class A retail dealer
79 in nonintoxicating beer as provided by article sixteen, chapter
80 eleven of this code: *Provided*, That a delicatessen, a caterer
81 or party supply store which is a grocery store as defined in
82 section two of this article and which is licensed as a Class A
83 retail dealer in nonintoxicating beer may be a retailer under
84 this article: *Provided, however*, That any delicatessen, caterer
85 or party supply store licensed in both capacities must
86 maintain average monthly sales exclusive of sales of wine
87 and nonintoxicating beer which exceed the average monthly
88 sales of nonintoxicating beer.

89 (f) A wine specialty shop under this article may also hold
90 a wine tasting license authorizing the retailer to serve
91 complimentary samples of wine in moderate quantities for
92 tasting. Such wine specialty shop shall organize a wine
93 taster's club, which has at least fifty duly elected or approved
94 dues-paying members in good standing. Such club shall meet
95 on the wine specialty shop's premises not more than one time
96 per week and shall either meet at a time when the premises
97 are closed to the general public, or shall meet in a separate

98 segregated facility on the premises to which the general
99 public is not admitted. Attendance at tastings shall be limited
100 to duly elected or approved dues-paying members and their
101 guests.

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

107 (h) The commissioner may issue a special license for the
108 retail sale of wine at any festival or fair which is endorsed or
109 sponsored by the governing body of a municipality or a
110 county commission. Such special license shall be issued for
111 a term of no longer than ten consecutive days and the fee
112 therefor shall be \$250 regardless of the term of the license
113 unless the applicant is the manufacturer of said wine on a
114 winery or a farm winery as defined in section five-a, article
115 one of this chapter, in which event the fee shall be \$50 if the
116 event is held on the premises of the winery or farm winery.
117 The application for the license shall contain information as
118 the commissioner may reasonably require and shall be
119 submitted to the commissioner at least thirty days prior to the
120 first day when wine is to be sold at the festival or fair. A
121 winery or a farm winery licensed under this subsection may
122 exhibit, conduct tastings or sell samples, not to exceed a
123 reasonable serving of three ounces, and may sell wine
124 samples for consumption on the premises during the
125 operation of a festival or fair: *Provided*, That for licensed
126 wineries or farm wineries at a licensed festival or fair the
127 tastings, samples and off-premises sales shall occur under the
128 hours of operation as required in this article, except that on
129 Sunday tastings, samples and off-premises sales are unlawful
130 between the hours of 2:00 a. m. and 10:00 a. m. A special
131 license issued other than to a winery or a farm winery may be

132 issued to a "wine club" as defined herein below. The festival
133 or fair committee or the governing body shall designate a
134 person to organize a club under a name which includes the
135 name of the festival or fair and the words "wine club". The
136 license shall be issued in the name of the wine club. A
137 licensee may not commence the sale of wine as provided in
138 this subsection until the wine club has at least fifty
139 dues-paying members who have been enrolled and to whom
140 membership cards have been issued. Thereafter, new
141 members may be enrolled and issued membership cards at
142 any time during the period for which the license is issued. A
143 wine club licensed under the provisions of this subsection
144 may sell wine only to its members, and in portions not to
145 exceed eight ounces per serving. The sales shall take place
146 on premises or in an area cordoned or segregated so as to be
147 closed to the general public, and the general public shall not
148 be admitted to the premises or area. A wine club licensee
149 under the provisions of this subsection shall be authorized to
150 serve complimentary samples of wine in moderate quantities
151 for tasting.

152 A license issued under the provisions of this subsection
153 and the licensee holding the license shall be subject to all
154 other provisions of this article and the rules and orders of the
155 commissioner relating to the special license: *Provided*, That
156 the commissioner may by rule, regulation or order provide for
157 certain waivers or exceptions with respect to the provisions,
158 rules, regulations or orders as the circumstances of each
159 festival or fair may require, including, without limitation, the
160 right to revoke or suspend any license issued pursuant to this
161 section prior to any notice or hearing notwithstanding the
162 provisions of section twenty-seven and twenty-eight of this
163 article: *Provided, however*, That under no circumstances shall
164 the provisions of subsection (c) or (d), section twenty of this
165 article be waived nor shall any exception be granted with
166 respect thereto.

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

170 (i) (A) The commissioner may issue a special license for
171 the retail sale of wine in a professional baseball stadium. A
172 license to sell wine granted pursuant to this subsection
173 entitles the licensee to sell and serve wine, for consumption
174 in a professional baseball stadium. For the purpose of this
175 subsection, "professional baseball stadium" means a facility
176 constructed primarily for the use of a major or minor league
177 baseball franchisee affiliated with the National Association of
178 Professional Baseball Leagues, Inc., or its successor, and
179 used as a major or minor league baseball park. Any special
180 license issued pursuant to this subsection shall be for a term
181 beginning on the date of issuance and ending on the next
182 following June 30, and its fee is \$250 regardless of the length
183 of the term of the license. The application for the special
184 license shall contain information as the commissioner may
185 reasonably require and must be submitted to the
186 commissioner at least thirty days prior to the first day when
187 wine is to be sold at the professional baseball stadium. The
188 special license may be issued in the name of the baseball
189 franchisee or the name of the primary food and beverage
190 vendor under contract with the baseball franchisee. These
191 sales must take place within the confines of the professional
192 baseball stadium, provided that the exterior of the area where
193 wine sales may occur are surrounded by a fence or other
194 barrier prohibiting entry except upon the franchisee's express
195 permission, and under the conditions and restrictions
196 established by the franchisee, so that the wine sales area is
197 closed to free and unrestricted entry by the general public.

198 (B) A license issued under this subsection and the
199 licensee holding the license is subject to all other provisions
200 of this article and the rules and orders of the commissioner

201 relating to the special license: *Provided*, That the
202 commissioner may by rule or order grant certain waivers or
203 exceptions to those rules or orders as the circumstances of
204 each professional baseball stadium may require, including,
205 without limitation, the right to revoke or suspend any license
206 issued pursuant to this section prior to any notice or hearing
207 notwithstanding sections twenty-seven and twenty-eight of
208 this article: *Provided, however*, That under no circumstances
209 may subsection (c) or (d), section twenty of this article be
210 waived nor shall any exception be granted concerning those
211 subsections.

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

216 (j) A license to sell wine granted to a private wine bed
217 and breakfast, private wine restaurant, private wine spa or a
218 private club under the provisions of this article entitles the
219 operator to sell and serve wine, for consumption on the
220 premises of the licensee, when the sale accompanies the
221 serving of food or a meal to its members and their guests in
222 accordance with the provisions of this article: *Provided*, That
223 a licensed private wine bed and breakfast, private wine
224 restaurant, private wine spa or a private club may permit a
225 person over twenty-one years of age to purchase wine,
226 consume wine and recork or reseal, using a tamper resistant
227 cork or seal, up to two separate bottles of unconsumed wine
228 in conjunction with serving of food or a meal to its members
229 and their guests in accordance with the provisions of this
230 article and in accordance with regulations promulgated by the
231 commissioner for the purpose of consumption of said wine
232 off premises: *Provided, however*, That for this article, food or
233 a meal provided by the private licensee means that the total
234 food purchase, excluding beverage purchases, taxes, gratuity

235 or other fees is at least \$15: *Provided further*, That a licensed
236 private wine restaurant or a private club may offer for sale for
237 consumption off the premises, sealed bottles of wine to its
238 customers provided that no more than one bottle is sold per
239 each person over twenty-one years of age, as verified by the
240 private wine restaurant or private club, for consumption off
241 the premises. Such licensees are authorized to keep and
242 maintain on their premises a supply of wine in quantities as
243 may be appropriate for the conduct of operations thereof.
244 Any sale of wine so made shall be subject to all restrictions
245 set forth in section twenty of this article. A private wine
246 restaurant may also be licensed as a Class A retail dealer in
247 nonintoxicating beer as provided by article sixteen, chapter
248 eleven of this code.

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

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

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

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

267 (o) A wine specialty shop under this article may also hold
268 a wine sampling license authorizing the wine specialty shop
269 to conduct special wine sampling events at a licensed wine
270 specialty shop location during regular hours of business. The
271 wine specialty shop may serve up to three complimentary
272 samples of wine, consisting of no more than one ounce each,
273 to any one consumer in one day. Persons serving the
274 complimentary samples must be twenty-one years of age and
275 an authorized representative of the licensed wine specialty
276 shop, winery, farm winery or a representative of a distributor
277 or registered supplier. Distributor and supplier representatives
278 attending wine sampling events must be registered with the
279 commissioner. No licensee, employee or representative may
280 furnish, give or serve complimentary samples of wine to any
281 person less than twenty-one years of age or to a person who
282 is physically incapacitated due to the consumption of
283 alcoholic liquor or the use of drugs. The wine specialty shop
284 shall notify and secure permission from the commissioner for
285 all wine sampling events one month prior to the event. Wine
286 sampling events may not exceed six hours per calendar day.
287 Licensees must purchase all wines used during these events
288 from a licensed farm winery or a licensed distributor.

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

301 (q) The commissioner may issue special licenses to
302 heritage fairs and festivals allowing the sale, serving and
303 sampling of wine from a licensed farm winery. The license
304 application shall contain information required by the
305 commissioner and shall be submitted to the commissioner at
306 least thirty days prior to the event. Wines used during these
307 events may be donated by or purchased from a licensed farm
308 winery. Under no circumstances may the provision of
309 subsection (c), section twenty of this article be waived nor
310 may any exception be granted with respect thereto. The
311 commissioner shall propose rules for legislative approval in
312 accordance with article three, chapter twenty-nine-a of this
313 code to implement the provisions of this subsection.

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

Rocky Fulmer
.....
Member ~~Chairman~~ Senate Committee

Jimmy Wells
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Joseph M. Minard
.....
Clerk of the Senate

Steve D. Smith
.....
Clerk of the House of Delegates

Jeffery
.....
President of the Senate

[Signature]
.....
Speaker of the House of Delegates

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SENATE OF STATE

2013 MAY -2 PM 3:32

FILED

The within *is approved* this the *2nd*
Day of *May*, 2013.

Earl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 1:50 pm