

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 450**

5 (SENATORS WALTERS, BLAIR, CARMICHAEL, MCCABE, PALUMBO AND WELLS, *original*
6 *sponsors*)

7 _____
8 [Passed March 8, 2014; in effect from passage.]
9 _____

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11
12 AN ACT to amend and reenact §60-1-5 of the Code of West Virginia,
13 1931, as amended; and to amend and reenact §60-8-3 of said
14 code, all relating to the licensed sale and consumption of
15 alcoholic beverages in outdoor settings adjacent to public
16 places; relating to the sale of liquors in liquors in outdoor
17 dining areas adjoining an ABCA-licensed facility; permitting
18 the sale of wine at certain college and university sports
19 stadiums; establishing the conditions under which wine may be
20 sold; setting a licensing fee; establishing who may hold a
21 license; stating where wine may be served; granting the
22 authority to grant waivers and exceptions and to revoke
23 licenses; defining a term; authorizing rulemaking; and
24 clarifying the definition of public place as it relates to
25 such special licenses.

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

27
28 That §60-1-5 of the Code of West Virginia, 1931, as amended, be

1 amended and reenacted; and that §60-8-3 of said code be amended and
2 reenacted, all to read as follows:

3 **ARTICLE 1. GENERAL PROVISIONS.**

4 **§60-1-5. Definitions.**

5 For the purposes of this chapter:

6 "Alcohol" shall mean ethyl alcohol whatever its origin and
7 shall include synthetic ethyl alcohol but not denatured alcohol.

8 "Beer" shall mean any beverage obtained by the fermentation of
9 barley, malt, hops or any other similar product or substitute, and
10 containing more alcohol than that of nonintoxicating beer.

11 "Nonintoxicating beer" shall mean any beverage obtained by the
12 fermentation of barley, malt, hops or similar products or
13 substitute and containing not more alcohol than that specified by
14 section two, article sixteen, chapter eleven of this code.

15 "Wine" shall mean any alcoholic beverage obtained by the
16 fermentation of the natural content of fruits, or other
17 agricultural products, containing sugar.

18 "Spirits" shall mean any alcoholic beverage obtained by
19 distillation and mixed with potable water and other substances in
20 solution and includes brandy, rum, whiskey, cordials and gin.

21 "Alcoholic liquor" shall include alcohol, beer, wine and
22 spirits and any liquid or solid capable of being used as a
23 beverage, but shall not include nonintoxicating beer.

24 "Original package" shall mean any closed or sealed container
25 or receptacle used for holding alcoholic liquor.

26 "Sale" shall mean any transfer, exchange or barter in any
27 manner or by any means, for a consideration, and shall include all
28 sales made by principal, proprietor, agent or employee.

1 "Selling" shall include solicitation or receipt of orders;
2 possession for sale; and possession with intent to sell.

3 "Person" shall mean an individual, firm, partnership, limited
4 partnership, corporation or voluntary association.

5 "Manufacture" means to distill, rectify, ferment, brew, make,
6 mix, concoct, process, blend, bottle or fill an original package
7 with any alcoholic liquor.

8 "Manufacturer" shall mean any person engaged in the
9 manufacture of any alcoholic liquor, and among others includes a
10 distiller, a rectifier, a wine maker and a brewer.

11 "Brewery" shall mean an establishment where beer is
12 manufactured or in any way prepared.

13 "Winery" shall mean an establishment where wine is
14 manufactured or in any way prepared.

15 "Distillery" shall mean an establishment where alcoholic
16 liquor other than wine or beer is manufactured or in any way
17 prepared.

18 "Public place" shall mean any place, building or conveyance to
19 which the public has, or is permitted to have access, including
20 restaurants, soda fountains, hotel dining rooms, lobbies and
21 corridors of hotels and any highway, street, lane, park or place of
22 public resort or amusement: *Provided*, That the term "public place"
23 shall not mean or include any of the above-named places or any
24 portion or portions thereof which qualify and are licensed under
25 the provisions of this chapter to sell alcoholic liquors for
26 consumption on the premises: *Provided, however*, That the term
27 "public place" shall not mean or include any legally demarcated
28 area designated solely for the consumption of beverages and freshly

1 prepared food that directly connects and adjoins any portion or
2 portions of a premises that qualifies and is licensed under the
3 provisions of this chapter to sell alcoholic liquors for
4 consumption thereupon: *Provided further*, That the term "public
5 place" shall also not include a facility constructed primarily for
6 the use of a Division I college that is a member of the National
7 Collegiate Athletic Association, or its successor, and used as a
8 football, basketball, baseball, soccer or other Division I sports
9 stadium which holds a special license to sell wine pursuant to the
10 provisions of section three, article eight of this chapter, in the
11 designated areas of sale and consumption of wine and other
12 restrictions established by that section and the terms of the
13 special license issued thereunder.

14 "State liquor store" shall mean a store established and
15 operated by the commission under this chapter for the sale of
16 alcoholic liquor in the original package for consumption off the
17 premises.

18 "An agency" shall mean a drugstore, grocery store or general
19 store designated by the commission as a retail distributor of
20 alcoholic liquor for the West Virginia Alcohol Beverage Control
21 Commissioner.

22 "Department" shall mean the organization through which the
23 commission exercises powers imposed upon it by this chapter.

24 "Commissioner" or "commission" shall mean the West Virginia
25 Alcohol Beverage Control Commissioner.

26 "Intoxicated" shall mean having one's faculties impaired by
27 alcohol or other drugs to the point where physical or mental
28 control or both are markedly diminished.

1 **ARTICLE 8. SALE OF WINES.**

2 **§60-8-3. Licenses; fees; general restrictions.**

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

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

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

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

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

1 license;

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

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

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

17 (7) Two hundred fifty dollars per year for a private wine
18 restaurant license and each separate restaurant from which a
19 licensee sells wine shall be separately licensed and there shall be
20 collected with respect to each location the annual license fee of
21 \$250 as herein provided;

22 (8) One hundred fifty dollars per year for a private wine spa
23 license and each separate private wine spa from which a licensee
24 sells wine shall be separately licensed and there shall be
25 collected with respect to each location the annual license fee of
26 \$150 as herein provided;

27 (9) One hundred fifty dollars per year for a wine sampling
28 license issued for a wine specialty shop under subsection (n) of

1 this section;

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

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

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

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

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

20 (e) No retailer may be licensed as a Class A retail dealer in
21 nonintoxicating beer as provided by article sixteen, chapter eleven
22 of this code: *Provided*, That a delicatessen, a caterer or party
23 supply store which is a grocery store as defined in section two of
24 this article and which is licensed as a Class A retail dealer in
25 nonintoxicating beer may be a retailer under this article:
26 *Provided, however*, That any delicatessen, caterer or party supply
27 store licensed in both capacities must maintain average monthly
28 sales exclusive of sales of wine and nonintoxicating beer which

1 exceed the average monthly sales of nonintoxicating beer.

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

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

18 (h) The commissioner may issue a special license for the
19 retail sale of wine at any festival or fair which is endorsed or
20 sponsored by the governing body of a municipality or a county
21 commission. Such special license shall be issued for a term of no
22 longer than ten consecutive days and the fee therefor shall be \$250
23 regardless of the term of the license unless the applicant is the
24 manufacturer of said wine on a winery or a farm winery as defined
25 in section five-a, article one of this chapter, in which event the
26 fee shall be \$50 if the event is held on the premises of the winery
27 or farm winery. The application for the license shall contain
28 information as the commissioner may reasonably require and shall be

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

1 authorized to serve complimentary samples of wine in moderate
2 quantities for tasting.

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

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

20 (i) (A) The commissioner may issue a special license for the
21 retail sale of wine in a professional baseball stadium. A license
22 to sell wine granted pursuant to this subsection entitles the
23 licensee to sell and serve wine, for consumption in a professional
24 baseball stadium. For the purpose of this subsection,
25 "professional baseball stadium" means a facility constructed
26 primarily for the use of a major or minor league baseball
27 franchisee affiliated with the National Association of Professional
28 Baseball Leagues, Inc., or its successor, and used as a major or

1 minor league baseball park. Any special license issued pursuant to
2 this subsection shall be for a term beginning on the date of
3 issuance and ending on the next following June 30, and its fee is
4 \$250 regardless of the length of the term of the license. The
5 application for the special license shall contain information as
6 the commissioner may reasonably require and must be submitted to
7 the commissioner at least thirty days prior to the first day when
8 wine is to be sold at the professional baseball stadium. The
9 special license may be issued in the name of the baseball
10 franchisee or the name of the primary food and beverage vendor
11 under contract with the baseball franchisee. These sales must take
12 place within the confines of the professional baseball stadium,
13 provided that the exterior of the area where wine sales may occur
14 are surrounded by a fence or other barrier prohibiting entry except
15 upon the franchisee's express permission, and under the conditions
16 and restrictions established by the franchisee, so that the wine
17 sales area is closed to free and unrestricted entry by the general
18 public.

19 (B) A license issued under this subsection and the licensee
20 holding the license is subject to all other provisions of this
21 article and the rules and orders of the commissioner relating to
22 the special license: *Provided*, That the commissioner may by rule or
23 order grant certain waivers or exceptions to those rules or orders
24 as the circumstances of each professional baseball stadium may
25 require, including, without limitation, the right to revoke or
26 suspend any license issued pursuant to this section prior to any
27 notice or hearing notwithstanding sections twenty-seven and twenty-
28 eight of this article: *Provided, however*, That under no

1 circumstances may subsection (c) or (d), section twenty of this
2 article be waived nor shall any exception be granted concerning
3 those subsections.

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

7 (j) A license to sell wine granted to a private wine bed and
8 breakfast, private wine restaurant, private wine spa or a private
9 club under the provisions of this article entitles the operator to
10 sell and serve wine, for consumption on the premises of the
11 licensee, when the sale accompanies the serving of food or a meal
12 to its members and their guests in accordance with the provisions
13 of this article: *Provided*, That a licensed private wine bed and
14 breakfast, private wine restaurant, private wine spa or a private
15 club may permit a person over twenty-one years of age to purchase
16 wine, consume wine and recork or reseal, using a tamper resistant
17 cork or seal, up to two separate bottles of unconsumed wine in
18 conjunction with serving of food or a meal to its members and their
19 guests in accordance with the provisions of this article and in
20 accordance with regulations promulgated by the commissioner for the
21 purpose of consumption of said wine off premises: *Provided*,
22 *however*, That for this article, food or a meal provided by the
23 private licensee means that the total food purchase, excluding
24 beverage purchases, taxes, gratuity or other fees is at least \$15:
25 *Provided further*, That a licensed private wine restaurant or a
26 private club may offer for sale for consumption off the premises,
27 sealed bottles of wine to its customers provided that no more than
28 one bottle is sold per each person over twenty-one years of age, as

1 verified by the private wine restaurant or private club, for
2 consumption off the premises. Such licensees are authorized to
3 keep and maintain on their premises a supply of wine in quantities
4 as may be appropriate for the conduct of operations thereof. Any
5 sale of wine so made shall be subject to all restrictions set forth
6 in section twenty of this article. A private wine restaurant may
7 also be licensed as a Class A retail dealer in nonintoxicating beer
8 as provided by article sixteen, chapter eleven of this code.

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

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

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

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

27 (o) A wine specialty shop under this article may also hold a
28 wine sampling license authorizing the wine specialty shop to

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

20 (p) The commissioner may issue special one-day licenses to
21 duly organized, nonprofit corporations and associations allowing
22 the sale and serving of wine when raising money for athletic,
23 charitable, educational or religious purposes. The license
24 application shall contain information as the commissioner may
25 reasonably require and shall be submitted to the commissioner at
26 least thirty days prior to the event. Wines used during these
27 events may be donated by or purchased from a licensed retailer, a
28 distributor or a farm winery. Under no circumstances may the

1 provision of subsection (c), section twenty of this article be
2 waived nor may any exception be granted with respect thereto.

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

15 (r)(1) The commissioner may issue a special license for the
16 retail sale of wine in a college stadium. A license to sell wine
17 granted pursuant to this subsection entitles the licensee to sell
18 and serve wine for consumption in a college stadium. For the
19 purpose of this subsection, "college stadium" means a facility
20 constructed primarily for the use of a Division I college that is
21 a member of the National Collegiate Athletic Association, or its
22 successor, and used as a football, basketball, baseball, soccer or
23 other Division I sports stadium. A special license issued pursuant
24 to this subsection shall be for a term beginning on the date of its
25 issuance and ending on the next following June 30, and its fee is
26 \$250 regardless of the length of the term of the license. The
27 application for the special license shall contain information as
28 the commissioner may reasonably require and must be submitted to

1 the commissioner at least thirty days prior to the first day when
2 wine is to be sold. The special license may be issued in the name
3 of the National Collegiate Athletic Association Division I college
4 or university or the name of the primary food and beverage vendor
5 under contract with that college or university. These sales must
6 take place within the confines of the college stadium: *Provided,*
7 That the exterior of the area where wine sales may occur are
8 surrounded by a fence or other barrier prohibiting entry except
9 upon the college or university's express permission, and under the
10 conditions and restrictions established by the college or
11 university, so that the wine sales area is closed to free and
12 unrestricted entry by the general public.

13 (2) A license issued under this subsection and the licensee
14 are subject to the other requirements of this article and the rules
15 and orders of the commissioner relating to the special license:
16 *Provided,* That the commissioner may by rule or order grant certain
17 waivers or exceptions to those rules or orders as the circumstances
18 of each the college stadium may require, including, without
19 limitation, the right to revoke or suspend any license issued
20 pursuant to this section prior to any notice or hearing
21 notwithstanding sections twenty-seven and twenty-eight of this
22 article: *Provided, however,* That subsection (c) or (d), section
23 twenty of this article may not be waived, nor shall any exception
24 be granted concerning those subsections.

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