

1 **Senate Bill No. 580**

2 (By Senators Beach, Williams, Kessler (Mr. President), Cann,  
3 Cookman, Edgell, Facemire, Green, D. Hall, Laird, Stollings,  
4 Sypolt, Tucker, Walters, Wells, Yost and Plymale

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**FISCAL  
NOTE**

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7 [Introduced February 14, 2014; referred to the Committee on the  
8 Judiciary; and then to the Committee on Finance.]

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11 A BILL to amend and reenact §60-8-3 of the Code of West Virginia,  
12 1931, as amended, relating to permitting the sale of wine at  
13 certain college and university sports stadiums; establishing  
14 the conditions under which wine may be sold; setting a  
15 licensing fee; establishing who may hold a license; stating  
16 where wine may be served; granting the authority to grant  
17 waivers and exceptions and to revoke licenses; defining a  
18 term; and authorizing rulemaking.

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

20 That §60-8-3 of the Code of West Virginia, 1931, as amended,  
21 be amended and reenacted to read as follows:

22 **ARTICLE 8. SALE OF WINES.**

23 **§60-8-3. Licenses; fees; general restrictions.**

24 (a) No person may engage in business in the capacity of a

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

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

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

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

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

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

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

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

18           (7) Two hundred fifty dollars per year for a private wine  
19 restaurant license, and each separate restaurant from which a  
20 licensee sells wine shall be separately licensed and there shall be  
21 collected with respect to each location the annual license fee of  
22 \$250 as herein provided;

23           (8) One hundred fifty dollars per year for a private wine spa  
24 license and each separate private wine spa from which a licensee

1 sells wine shall be separately licensed and there shall be  
2 collected with respect to each location the annual license fee of  
3 \$150 as herein provided;

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

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

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

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

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

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

1           (e) No retailer may be licensed as a Class A retail dealer in  
2 nonintoxicating beer as provided by article sixteen, chapter eleven  
3 of this code: *Provided*, That a delicatessen, a caterer or party  
4 supply store which is a grocery store as defined in section two of  
5 this article and which is licensed as a Class A retail dealer in  
6 nonintoxicating beer may be a retailer under this article:  
7 *Provided, however*, That any delicatessen, caterer or party supply  
8 store licensed in both capacities must maintain average monthly  
9 sales exclusive of sales of wine and nonintoxicating beer which  
10 exceed the average monthly sales of nonintoxicating beer.

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

23           (g) A retailer who has more than one place of retail business  
24 shall obtain a license for each separate retail establishment. A

1 retailer's license may be issued only to the proprietor or owner of  
2 a bona fide grocery store or wine specialty shop.

3       (h) The commissioner may issue a special license for the  
4 retail sale of wine at any festival or fair which is endorsed or  
5 sponsored by the governing body of a municipality or a county  
6 commission. Such special license shall be issued for a term of no  
7 longer than ten consecutive days and the fee therefor shall be \$250  
8 regardless of the term of the license unless the applicant is the  
9 manufacturer of said wine on a winery or a farm winery as defined  
10 in section five-a, article one of this chapter, in which event the  
11 fee shall be \$50 if the event is held on the premises of the winery  
12 or farm winery. The application for the license shall contain  
13 information as the commissioner may reasonably require and shall be  
14 submitted to the commissioner at least thirty days prior to the  
15 first day when wine is to be sold at the festival or fair. A  
16 winery or a farm winery licensed under this subsection may exhibit,  
17 conduct tastings or sell samples, not to exceed a reasonable  
18 serving of three ounces, and may sell wine samples for consumption  
19 on the premises during the operation of a festival or fair:  
20 *Provided*, That for licensed wineries or farm wineries at a licensed  
21 festival or fair the tastings, samples and off-premises sales shall  
22 occur under the hours of operation as required in this article,  
23 except that on Sunday tastings, samples and off-premises sales are  
24 unlawful between the hours of 2:00 a. m. and 10:00 a. m. A special

1 license issued other than to a winery or a farm winery may be  
2 issued to a "wine club" as defined herein below. The festival or  
3 fair committee or the governing body shall designate a person to  
4 organize a club under a name which includes the name of the  
5 festival or fair and the words "wine club". The license shall be  
6 issued in the name of the wine club. A licensee may not commence  
7 the sale of wine as provided in this subsection until the wine club  
8 has at least fifty dues-paying members who have been enrolled and  
9 to whom membership cards have been issued. Thereafter, new members  
10 may be enrolled and issued membership cards at any time during the  
11 period for which the license is issued. A wine club licensed under  
12 the provisions of this subsection may sell wine only to its  
13 members, and in portions not to exceed eight ounces per serving.  
14 The sales shall take place on premises or in an area cordoned or  
15 segregated so as to be closed to the general public, and the  
16 general public shall not be admitted to the premises or area. A  
17 wine club licensee under the provisions of this subsection shall be  
18 authorized to serve complimentary samples of wine in moderate  
19 quantities for tasting.

20       A license issued under the provisions of this subsection and  
21 the licensee holding the license shall be subject to all other  
22 provisions of this article and the rules and orders of the  
23 commissioner relating to the special license: *Provided*, That the  
24 commissioner may by rule, regulation or order provide for certain

1 waivers or exceptions with respect to the provisions, rules,  
2 regulations or orders as the circumstances of each festival or fair  
3 may require, including, without limitation, the right to revoke or  
4 suspend any license issued pursuant to this section prior to any  
5 notice or hearing notwithstanding the provisions of section twenty-  
6 seven and twenty-eight of this article: *Provided, however,* That  
7 under no circumstances shall the provisions of subsection (c) or  
8 (d), section twenty of this article be waived nor shall any  
9 exception be granted with respect thereto.

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

13       (I) (A) The commissioner may issue a special license for the  
14 retail sale of wine in a professional baseball stadium. A license  
15 to sell wine granted pursuant to this subsection entitles the  
16 licensee to sell and serve wine, for consumption in a professional  
17 baseball stadium. For the purpose of this subsection,  
18 "professional baseball stadium" means a facility constructed  
19 primarily for the use of a major or minor league baseball  
20 franchisee affiliated with the National Association of Professional  
21 Baseball Leagues, Inc., or its successor, and used as a major or  
22 minor league baseball park. Any special license issued pursuant to  
23 this subsection shall be for a term beginning on the date of  
24 issuance and ending on the next following June 30, and its fee is



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

16 (B) A license issued under this subsection and the licensee  
17 holding the license is subject to all other provisions of this  
18 article and the rules and orders of the commissioner relating to  
19 the special license: *Provided*, That the commissioner may by rule or  
20 order grant certain waivers or exceptions to those rules or orders  
21 as the circumstances of each professional baseball stadium may  
22 require, including, without limitation, the right to revoke or  
23 suspend any license issued pursuant to this section prior to any  
24 notice or hearing notwithstanding sections twenty-seven and twenty-

1 eight of this article: *Provided, however,* That under no  
2 circumstances may subsection (c) or (d), section twenty of this  
3 article be waived nor shall any exception be granted concerning  
4 those subsections.

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

8 (j) A license to sell wine granted to a private wine bed and  
9 breakfast, private wine restaurant, private wine spa or a private  
10 club under the provisions of this article entitles the operator to  
11 sell and serve wine, for consumption on the premises of the  
12 licensee, when the sale accompanies the serving of food or a meal  
13 to its members and their guests in accordance with the provisions  
14 of this article: *Provided,* That a licensed private wine bed and  
15 breakfast, private wine restaurant, private wine spa or a private  
16 club may permit a person over twenty-one years of age to purchase  
17 wine, consume wine and recork or reseal, using a tamper resistant  
18 cork or seal, up to two separate bottles of unconsumed wine in  
19 conjunction with serving of food or a meal to its members and their  
20 guests in accordance with the provisions of this article and in  
21 accordance with regulations promulgated by the commissioner for the  
22 purpose of consumption of said wine off premises: *Provided,*  
23 *however,* That for this article, food or a meal provided by the  
24 private licensee means that the total food purchase, excluding

1 beverage purchases, taxes, gratuity or other fees is at least \$15:  
2 *Provided further,* That a licensed private wine restaurant or a  
3 private club may offer for sale for consumption off the premises,  
4 sealed bottles of wine to its customers provided that no more than  
5 one bottle is sold per each person over twenty-one years of age, as  
6 verified by the private wine restaurant or private club, for  
7 consumption off the premises. Such licensees are authorized to  
8 keep and maintain on their premises a supply of wine in quantities  
9 as may be appropriate for the conduct of operations thereof. Any  
10 sale of wine so made shall be subject to all restrictions set forth  
11 in section twenty of this article. A private wine restaurant may  
12 also be licensed as a Class A retail dealer in nonintoxicating beer  
13 as provided by article sixteen, chapter eleven of this code.

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

21 (l) The commissioner shall promulgate legislative rules in  
22 accordance with the provisions of chapter twenty-nine-a of this  
23 code to allow restaurants to serve wine with meals, and to sell  
24 wine by the bottle for off-premises consumption as provided in

1 subsection (j) of this section. Each restaurant so licensed shall  
2 be charged an additional \$100 per year fee.

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

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

8 (o) A wine specialty shop under this article may also hold a  
9 wine sampling license authorizing the wine specialty shop to  
10 conduct special wine sampling events at a licensed wine specialty  
11 shop location during regular hours of business. The wine specialty  
12 shop may serve up to three complimentary samples of wine,  
13 consisting of no more than one ounce each, to any one consumer in  
14 one day. Persons serving the complimentary samples must be twenty-  
15 one years of age and an authorized representative of the licensed  
16 wine specialty shop, winery, farm winery or a representative of a  
17 distributor or registered supplier. Distributor and supplier  
18 representatives attending wine sampling events must be registered  
19 with the commissioner. No licensee, employee or representative may  
20 furnish, give or serve complimentary samples of wine to any person  
21 less than twenty-one years of age or to a person who is physically  
22 incapacitated due to the consumption of alcoholic liquor or the use  
23 of drugs. The wine specialty shop shall notify and secure  
24 permission from the commissioner for all wine sampling events one

1 month prior to the event. Wine sampling events may not exceed six  
2 hours per calendar day. Licensees must purchase all wines used  
3 during these events from a licensed farm winery or a licensed  
4 distributor.

5 (p) The commissioner may issue special one-day licenses to  
6 duly organized, nonprofit corporations and associations allowing  
7 the sale and serving of wine when raising money for athletic,  
8 charitable, educational or religious purposes. The license  
9 application shall contain information as the commissioner may  
10 reasonably require and shall be submitted to the commissioner at  
11 least thirty days prior to the event. Wines used during these  
12 events may be donated by or purchased from a licensed retailer, a  
13 distributor or a farm winery. Under no circumstances may the  
14 provision of subsection (c), section twenty of this article be  
15 waived nor may any exception be granted with respect thereto.

16 (q) The commissioner may issue special licenses to heritage  
17 fairs and festivals allowing the sale, serving and sampling of wine  
18 from a licensed farm winery. The license application shall contain  
19 information required by the commissioner and shall be submitted to  
20 the commissioner at least thirty days prior to the event. Wines  
21 used during these events may be donated by or purchased from a  
22 licensed farm winery. Under no circumstances may the provision of  
23 subsection (c), section twenty of this article be waived nor may  
24 any exception be granted with respect thereto. The commissioner

1 shall propose rules for legislative approval in accordance with  
2 article three, chapter twenty-nine-a of this code to implement the  
3 provisions of this subsection.

4 (r) (1) The commissioner may issue a special license for the  
5 retail sale of wine in a college stadium. A license to sell wine  
6 granted pursuant to this subsection entitles the licensee to sell  
7 and serve wine for consumption in a college stadium. For the  
8 purpose of this subsection, "college stadium" means a facility  
9 constructed primarily for the use of a Division I college that is  
10 a member of the National Collegiate Athletic Association, or its  
11 successor, and used as a football, basketball, baseball, soccer or  
12 other Division I sports stadium. A special license issued pursuant  
13 to this subsection shall be for a term beginning on the date of its  
14 issuance and ending on the next following June 30, and its fee is  
15 \$250 regardless of the length of the term of the license. The  
16 application for the special license shall contain information as  
17 the commissioner may reasonably require and must be submitted to  
18 the commissioner at least thirty days prior to the first day when  
19 wine is to be sold. The special license may be issued in the name  
20 of the National Collegiate Athletic Association Division I college  
21 or university or the name of the primary food and beverage vendor  
22 under contract with that college or university. These sales must  
23 take place within the confines of the college stadium: *Provided,*  
24 That the exterior of the area where wine sales may occur are

1 surrounded by a fence or other barrier prohibiting entry except  
2 upon the college or university's express permission, and under the  
3 conditions and restrictions established by the college or  
4 university, so that the wine sales area is closed to free and  
5 unrestricted entry by the general public.

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

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

NOTE: The purpose of this bill permits the sale of wine at

certain college and university sports stadiums. The bill establishes the conditions under which wine may be sold. The bill sets a licensing fee. The bill establishes who may hold a license. The bill grants the authority to grant waivers and exceptions and to revoke licenses. The bill states where wine may be served. The bill defines a term and authorizes rulemaking.

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