

COMMITTEE SUBSTITUTE

for

**H. B. 2466**

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(BY DELEGATE(S) STORCH, ZATEZALO,  
MCGEEHAN, WELD, FLUHARTY, TRECOST, FERRO, HOWELL,  
PASDON AND D. EVANS)

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(Originating in the House Committee on Finance)  
[February 27, 2015]

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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-16-11b; and to amend and reenact §60-6-7 and §60-8-3 of said code, all relating to the sale of alcoholic beverages by certain non-profit organizations; creating a one-day special license; establishing a license fee; allowing non-intoxicating beer, wine and liquor from a licensed mini-distillery to be sold and served at fundraising events.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-16-11b; and that §60-6-7 and §60-8-3 be amended and reenacted, to read as follows:

## **CHAPTER 11. TAXATION.**

### **ARTICLE 16. NONINTOXICATING BEER.**

#### **§11-16-11b. Special license for one-day charitable events; license fee and application; license subject to provisions of article; exceptions.**

- 1       (a) The commissioner may issue a special one-day license to
- 2 be designated a Class S1 license for the retail sale of
- 3 nonintoxicating beer or liquor to a duly organized nonprofit
- 4 corporation, limited liability entity or an association having
- 5 received federal tax exempt status allowing the sale and serving
- 6 of nonintoxicating beer or liquor when raising money for artistic,
- 7 athletic, charitable, educational or religious purposes: *Provided,*
- 8 That the liquor served and sold was produced at a mini-distillery
- 9 licensed for retail sale under chapter sixty of this code. The
- 10 special license may be issued for a term no longer than one day.
- 11 The nonrefundable fee is \$25 for the one-day license. The
- 12 license application shall contain information the commissioner
- 13 requires and shall be submitted to the commissioner at least

14 fifteen days prior to the event. Nonintoxicating beer or liquor  
15 used during the event may be donated by or purchased from a  
16 licensed retailer, distributor, mini-distillery or resident brewer.

17 (b) A license issued under the provisions of this section and  
18 the licensee holding the license is subject to all other provisions  
19 of this article and the rules and orders of the commissioner  
20 relating to the special license: *Provided*, That the commissioner  
21 may by rule or order allow waivers or exceptions with respect to  
22 those provisions, rules or orders as the circumstances of each  
23 event requires, including, without limitation, the right to revoke  
24 or suspend any license issued pursuant to this section prior to  
25 any notice or hearing, notwithstanding the provisions of section  
26 twenty-four of this article: *Provided, however*, That under no  
27 circumstances may the provisions of subdivisions (1), (2) or (3),  
28 subsection (a), section eighteen of this article be waived or an  
29 exception granted with respect thereto.

## CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

### ARTICLE 6. MISCELLANEOUS PROVISIONS.

#### §60-6-7. Specific acts forbidden; indictment.

1 A person ~~shall~~ may not:

2 (1) Manufacture or sell in this state without a license any  
3 alcoholic liquor except as permitted by this article;

4 (2) Aid or abet in the manufacture or sale of alcoholic liquor  
5 without a license except as permitted by this article;

6 (3) Sell without a license any alcoholic liquor other than  
7 permitted by this article;

8 (4) Adulterate any alcoholic liquor by the addition of any  
9 drug, methyl alcohol, crude, unrectified or impure form of ethyl  
10 alcohol, or other foreign or deleterious substance or liquid;

11 (5) Refill, with alcoholic liquor, any bottle or other container  
12 in which alcoholic liquor has been sold at retail in this state;

13 (6) Advertise any alcoholic liquor in this state except in  
14 accordance with the rules and regulations of the commissioner;

15 or

16 (7) Distribute, deal in, process, or use crowns, stamps or  
17 seals required under the authority of this chapter, except in  
18 accordance with the rules and regulations prescribed by the  
19 commissioner.

20 A person who violates any provision of this section shall be  
21 guilty of a misdemeanor and, upon conviction shall be fined not

22 less than \$50 nor more than \$500, or confined in jail not less  
23 than thirty days nor more than one year or both such fine and  
24 imprisonment, for the first offense. Upon conviction of a second  
25 or subsequent offense, the court may in its discretion impose a  
26 penalty of confinement in ~~the penitentiary~~ a state correctional  
27 facility for a period not to exceed three years.

28 An indictment for any first violation of subdivisions (1), (2)  
29 and (3) of this section, or any of them, shall be sufficient if in  
30 form or effect as follows:

31 State of West Virginia

32 County of ....., to wit:

33 The Grand Jurors of the State of West Virginia, in and for  
34 the body of the County of ....., upon their oaths present that  
35 ....., on the ..... day of ....., ~~1920~~....., in the said County  
36 of ....., did unlawfully, without a state license and without  
37 authorization under the Alcohol Beverage Control Act,  
38 manufacture and sell, and aid and abet in the manufacture and  
39 sale of a quantity of alcoholic liquor, against the peace and  
40 dignity of the state.

41 Any indictment under this section shall otherwise be in  
42 conformity with section one, article nine, chapter sixty-two of  
43 the code.

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

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

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

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

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

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

35 (5) One hundred fifty dollars per year for a wine tasting  
36 license;

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

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

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

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

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

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

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

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

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

73 (e) No retailer may be licensed as a Class A retail dealer in  
74 nonintoxicating beer as provided by article sixteen, chapter  
75 eleven of this code: *Provided*, That a delicatessen, a caterer or  
76 party supply store which is a grocery store as defined in section  
77 two of this article and which is licensed as a Class A retail dealer

78 in nonintoxicating beer may be a retailer under this article:  
79 *Provided, however,* That any delicatessen, caterer or party  
80 supply store licensed in both capacities must maintain average  
81 monthly sales exclusive of sales of wine and nonintoxicating  
82 beer which exceed the average monthly sales of nonintoxicating  
83 beer.

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

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

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

100 (h) The commissioner may issue a special license for the  
101 retail sale of wine at any festival or fair which is endorsed or  
102 sponsored by the governing body of a municipality or a county  
103 commission. ~~Such~~ The special license ~~shall~~ may be issued for a  
104 ~~term of~~ no longer than ten consecutive days and the fee therefor  
105 ~~shall be~~ is \$250 regardless of the term of the license unless the  
106 applicant is the manufacturer of ~~said~~ the wine on a winery or a  
107 farm winery as defined in section five-a, article one of this  
108 chapter, in which event the fee ~~shall be~~ is \$50 if the event is held  
109 on the premises of the winery or farm winery. The application  
110 for the license shall contain information as the commissioner  
111 may reasonably require and shall be submitted to the  
112 commissioner at least thirty days prior to the first day when wine  
113 is to be sold at the festival or fair. A winery or a farm winery  
114 licensed under this subsection may exhibit, conduct tastings or  
115 sell samples, not to exceed a reasonable serving of three ounces,  
116 and may sell wine samples for consumption on the premises  
117 during the operation of a festival or fair: *Provided*, That for

118 licensed wineries or farm wineries at a licensed festival or fair  
119 the tastings, samples and off-premises sales shall occur under the  
120 hours of operation as required in this article, except that on  
121 Sunday tastings, samples and off-premises sales are unlawful  
122 between the hours of 2:00 a. m. and 10:00 a. m. A special license  
123 issued other than to a winery or a farm winery may be issued to  
124 a “wine club” as defined herein below. The festival or fair  
125 committee or the governing body shall designate a person to  
126 organize a club under a name which includes the name of the  
127 festival or fair and the words “wine club”. The license shall be  
128 issued in the name of the wine club. A licensee may not  
129 commence the sale of wine as provided in this subsection until  
130 the wine club has at least fifty dues-paying members who have  
131 been enrolled and to whom membership cards have been issued.  
132 Thereafter, new members may be enrolled and issued  
133 membership cards at any time during the period for which the  
134 license is issued. A wine club licensed under the provisions of  
135 this subsection may sell wine only to its members, and in  
136 portions not to exceed eight ounces per serving. The sales shall  
137 take place on premises or in an area cordoned or segregated so

138 as to be closed to the general public, and the general public shall  
139 not be admitted to the premises or area. A wine club licensee  
140 under the provisions of this subsection ~~shall be~~ is authorized to  
141 serve complimentary samples of wine in moderate quantities for  
142 tasting.

143 A license issued under the provisions of this subsection and  
144 the licensee holding the license ~~shall be~~ is subject to all other  
145 provisions of this article and the rules and orders of the  
146 commissioner relating to the special license: *Provided*, That the  
147 commissioner may by rule ~~regulation~~ or order provide for certain  
148 waivers or exceptions with respect to the provisions, rules  
149 ~~regulations~~ or orders as the circumstances of each festival or fair  
150 may require, including, without limitation, the right to revoke or  
151 suspend any license issued pursuant to this section prior to any  
152 notice or hearing notwithstanding the provisions of section  
153 twenty-seven and twenty-eight of this article: *Provided*,  
154 *however*, That under no circumstances ~~shall~~ may the provisions  
155 of subsection (c) or (d), section twenty of this article be waived  
156 ~~nor shall~~ or any exception ~~be~~ granted with respect thereto.

157 A license issued under the provisions of this subsection and  
158 the licensee holding the license is not subject to the provisions  
159 of subsection (g) of this section.

160 (i) (A) The commissioner may issue a special license for the  
161 retail sale of wine in a professional baseball stadium. A license  
162 to sell wine granted pursuant to this subsection entitles the  
163 licensee to sell and serve wine, for consumption in a professional  
164 baseball stadium. For the purpose of this subsection,  
165 “professional baseball stadium” means a facility constructed  
166 primarily for the use of a major or minor league baseball  
167 franchisee affiliated with the National Association of  
168 Professional Baseball Leagues, Inc., or its successor, and used as  
169 a major or minor league baseball park. Any special license  
170 issued pursuant to this subsection shall be for a term beginning  
171 on the date of issuance and ending on the next following June  
172 30, and its fee is \$250 regardless of the length of the term of the  
173 license. The application for the special license shall contain  
174 information as the commissioner may reasonably require and  
175 must be submitted to the commissioner at least thirty days prior  
176 to the first day when wine is to be sold at the professional

177 baseball stadium. The special license may be issued in the name  
178 of the baseball franchisee or the name of the primary food and  
179 beverage vendor under contract with the baseball franchisee.  
180 These sales must take place within the confines of the  
181 professional baseball stadium, provided that the exterior of the  
182 area where wine sales may occur are surrounded by a fence or  
183 other barrier prohibiting entry except upon the franchisee's  
184 express permission, and under the conditions and restrictions  
185 established by the franchisee, so that the wine sales area is  
186 closed to free and unrestricted entry by the general public.

187 (B) A license issued under this subsection and the licensee  
188 holding the license is subject to all other provisions of this article  
189 and the rules and orders of the commissioner relating to the  
190 special license: *Provided*, That the commissioner may by rule or  
191 order grant certain waivers or exceptions to those rules or orders  
192 as the circumstances of each professional baseball stadium may  
193 require, including, without limitation, the right to revoke or  
194 suspend any license issued pursuant to this section prior to any  
195 notice or hearing notwithstanding sections twenty-seven and  
196 twenty-eight of this article: *Provided, however*, That under no

197 circumstances may subsection (c) or (d), section twenty of this  
198 article be waived ~~nor shall any~~ or an exception be granted  
199 concerning those subsections.

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

203 (j) A license to sell wine granted to a private wine bed and  
204 breakfast, private wine restaurant, private wine spa or a private  
205 club under the provisions of this article entitles the operator to  
206 sell and serve wine, for consumption on the premises of the  
207 licensee, when the sale accompanies the serving of food or a  
208 meal to its members and their guests in accordance with the  
209 provisions of this article: *Provided*, That a licensed private wine  
210 bed and breakfast, private wine restaurant, private wine spa or a  
211 private club may permit a person over twenty-one years of age  
212 to purchase wine, consume wine and recork or reseal, using a  
213 tamper resistant cork or seal, up to two separate bottles of  
214 unconsumed wine in conjunction with serving of food or a meal  
215 to its members and their guests in accordance with the provisions  
216 of this article and in accordance with ~~regulations~~ rules

217 promulgated by the commissioner for the purpose of  
218 consumption of ~~said~~ the wine off premises: *Provided, however,*  
219 That for this article, food or a meal provided by the private  
220 licensee means that the total food purchase, excluding beverage  
221 purchases, taxes, gratuity or other fees is at least \$15: *Provided*  
222 *further,* That a licensed private wine restaurant or a private club  
223 may offer for sale for consumption off the premises, sealed  
224 bottles of wine to its customers provided that no more than one  
225 bottle is sold per each person over twenty-one years of age, as  
226 verified by the private wine restaurant or private club, for  
227 consumption off the premises. ~~Such~~ The licensees are authorized  
228 to keep and maintain on their premises a supply of wine in  
229 quantities as may be appropriate for the conduct of operations  
230 thereof. Any sale of wine so made ~~shall be~~ is subject to all  
231 restrictions set forth in section twenty of this article. A private  
232 wine restaurant may also be licensed as a Class A retail dealer in  
233 nonintoxicating beer as provided by article sixteen, chapter  
234 eleven of this code.

235 (k) With respect to subsections (h), (i), (j), (o) and (p) of this  
236 section, the commissioner shall ~~promulgate~~ propose legislative

237 rules in accordance with the provisions of chapter twenty-nine-a  
238 of this code with regard to the form of the applications, the  
239 suitability of both the applicant and location of the licensed  
240 premises and other legislative rules deemed necessary to carry  
241 the provisions of the subsections into effect.

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

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

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

253 (o) A wine specialty shop under this article may also hold a  
254 wine sampling license authorizing the wine specialty shop to  
255 conduct special wine sampling events at a licensed wine  
256 specialty shop location during regular hours of business. The

257 wine specialty shop may serve up to three complimentary  
258 samples of wine, consisting of no more than one ounce each, to  
259 any one consumer in one day. Persons serving the  
260 complimentary samples must be twenty-one years of age and an  
261 authorized representative of the licensed wine specialty shop,  
262 winery, farm winery or a representative of a distributor or  
263 registered supplier. Distributor and supplier representatives  
264 attending wine sampling events must be registered with the  
265 commissioner. No licensee, employee or representative may  
266 furnish, give or serve complimentary samples of wine to any  
267 person less than twenty-one years of age or to a person who is  
268 physically incapacitated due to the consumption of alcoholic  
269 liquor or the use of drugs. The wine specialty shop shall notify  
270 and secure permission from the commissioner for all wine  
271 sampling events one month prior to the event. Wine sampling  
272 events may not exceed six hours per calendar day. Licensees  
273 must purchase all wines used during these events from a licensed  
274 farm winery or a licensed distributor.

275 (p) The commissioner may issue special one-day licenses to  
276 duly organized, nonprofit corporations and associations having

277 received federal tax exempt status allowing the sale and serving  
278 of wine when raising money for artistic, athletic, charitable,  
279 educational or religious purposes. The nonrefundable fee is \$25  
280 for the one-day license. The license application shall contain  
281 information as the commissioner may reasonably require and  
282 shall be submitted to the commissioner at least ~~thirty~~ fifteen days  
283 prior to the event. Wines used during these events may be  
284 donated by or purchased from a licensed retailer, a distributor or  
285 a farm winery. Under no circumstances may the provision of  
286 subsection (c), section twenty of this article be waived ~~nor~~ or  
287 ~~may any~~ an exception be granted with respect thereto.

288 (q) The commissioner may issue special licenses to heritage  
289 fairs and festivals allowing the sale, serving and sampling of  
290 wine from a licensed farm winery. The license application shall  
291 contain information required by the commissioner and shall be  
292 submitted to the commissioner at least thirty days prior to the  
293 event. Wines used during these events may be donated by or  
294 purchased from a licensed farm winery. Under no circumstances  
295 may the provision of subsection (c), section twenty of this article  
296 be waived nor may any exception be granted with respect

297 thereto. The commissioner shall propose rules for legislative  
298 approval in accordance with article three, chapter twenty-nine-a  
299 of this code to implement the provisions of this subsection.

300 (r) (1) The commissioner may issue a special license for the  
301 retail sale of wine in a college stadium. A license to sell wine  
302 granted pursuant to this subsection entitles the licensee to sell  
303 and serve wine for consumption in a college stadium. For the  
304 purpose of this subsection, “college stadium” means a facility  
305 constructed primarily for the use of a Division I college that is  
306 a member of the National Collegiate Athletic Association, or its  
307 successor, and used as a football, basketball, baseball, soccer or  
308 other Division I sports stadium. A special license issued pursuant  
309 to this subsection shall be for a term beginning on the date of its  
310 issuance and ending on the next following June 30, and its fee is  
311 \$250 regardless of the length of the term of the license. The  
312 application for the special license shall contain information as  
313 the commissioner may reasonably require and must be submitted  
314 to the commissioner at least thirty days prior to the first day  
315 when wine is to be sold. The special license may be issued in the  
316 name of the National Collegiate Athletic Association Division I

317 college or university or the name of the primary food and  
318 beverage vendor under contract with that college or university.  
319 These sales must take place within the confines of the college  
320 stadium: *Provided*, That the exterior of the area where wine sales  
321 may occur are surrounded by a fence or other barrier prohibiting  
322 entry except upon the college or university's express permission,  
323 and under the conditions and restrictions established by the  
324 college or university, so that the wine sales area is closed to free  
325 and unrestricted entry by the general public.

326 (2) A license issued under this subsection and the licensee  
327 are subject to the other requirements of this article and the rules  
328 and orders of the commissioner relating to the special license:  
329 *Provided*, That the commissioner may by rule or order grant  
330 certain waivers or exceptions to those rules or orders as the  
331 circumstances of each the college stadium may require,  
332 including, without limitation, the right to revoke or suspend any  
333 license issued pursuant to this section prior to any notice or  
334 hearing notwithstanding sections twenty-seven and twenty-eight  
335 of this article: *Provided, however*, That subsection (c) or (d),

336 section twenty of this article may not be waived, nor ~~shall any~~

337 may an exception be granted concerning those subsections.

338 (3) The commissioner may propose rules for legislative

339 approval in accordance with article three, chapter twenty-nine-a

340 of this code to implement this subsection.

