

Senate Bill No. 571

(By Senators Kessler (Mr. President), Klempa, Kirkendoll,
Tucker, Williams, Stollings, Yost, Edgell, Palumbo, Wells,
Foster and Beach)

[Introduced February 10, 2012; referred to the Committee on the
Judiciary.]

**FISCAL
NOTE**

A BILL to amend and reenact §60-8-3 of the Code of West Virginia,
1931, as amended, relating to licensing wine sales at certain
professional baseball stadiums; providing license fees;
providing a definition of "professional baseball stadium";
providing standards for licensing and authority for the
commissioner to regulate such sales; and granting rule-making
authority.

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.

(a) No person may engage in business in the capacity of a
winery, farm winery, supplier, distributor, retailer, private wine

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

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

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

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

24 (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 such a license, except for the amount of
5 the license fee and the restriction to sales of winery or farm
6 winery wines, a winery or farm winery acting as a wine specialty
7 shop retailer is subject to all other provisions of this article
8 which are applicable to a wine specialty shop retailer as defined
9 in 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 such location the annual
16 license 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 such location the annual license fee
21 of \$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

1 collected with respect to each such location the annual license fee
2 of \$150 as herein provided;

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

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

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

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

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

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

24 (e) No retailer may be licensed as a Class A retail dealer in

1 nonintoxicating beer as provided by article sixteen, chapter eleven
2 of this code: *Provided*, That a delicatessen, a caterer or party
3 supply store which is a grocery store as defined in section two of
4 this article and which is licensed as a Class A retail dealer in
5 nonintoxicating beer may be a retailer under this article:
6 *Provided, however*, That any delicatessen, caterer or party supply
7 store licensed in both such capacities must maintain average
8 monthly sales exclusive of sales of wine and nonintoxicating beer
9 which exceed the average monthly sales of nonintoxicating beer.

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

22 (g) A retailer who has more than one place of retail business
23 shall obtain a license for each separate retail establishment. A
24 retailer's license may be issued only to the proprietor or owner of

1 a bona fide grocery store or wine specialty shop.

2 (h) The commissioner may issue a special license for the
3 retail sale of wine at any festival or fair which is endorsed or
4 sponsored by the governing body of a municipality or a county
5 commission. Such special license shall be issued for a term of no
6 longer than ten consecutive days and the fee therefor shall be \$250
7 regardless of the term of the license unless the applicant is the
8 manufacturer of said wine on a winery or a farm winery as defined
9 in section five-a, article one of this chapter, in which event the
10 fee shall be \$50 if the event is held on the premises of the winery
11 or farm winery. The application for such license shall contain
12 such information as the commissioner may reasonably require and
13 shall be submitted to the commissioner at least thirty days prior
14 to the first day when wine is to be sold at such festival or fair.
15 A winery or a farm winery licensed under this subsection may
16 exhibit, conduct tastings, not to exceed a reasonable serving, and
17 may sell wine only for consumption off the premises of such
18 festival or fair. A special license issued other than to a winery
19 or a farm winery may be issued to a "wine club" as defined herein
20 below. The festival or fair committee or the governing body shall
21 designate a person to organize a club under a name which includes
22 the name of the festival or fair and the words "wine club". The
23 license shall be issued in the name of the wine club. A licensee
24 may not commence the sale of wine as provided in this subsection

1 until the wine club has at least fifty dues-paying members who have
2 been enrolled and to whom membership cards have been issued.
3 Thereafter, new members may be enrolled and issued membership cards
4 at any time during the period for which the license is issued. A
5 wine club licensed under ~~the provisions of~~ this subsection may sell
6 wine only to its members, and in portions not to exceed eight
7 ounces per serving. Such sales shall take place on premises or in
8 an area cordoned or segregated so as to be closed to the general
9 public, and the general public shall not be admitted to such
10 premises or area. A wine club licensee under ~~the provisions of~~
11 this subsection shall be authorized to serve complimentary samples
12 of wine in moderate quantities for tasting.

13 A license issued under ~~the provisions of~~ this subsection and
14 the licensee holding such license shall be subject to all other
15 provisions of this article and the rules and orders of the
16 commissioner relating to such special license: *Provided*, That the
17 commissioner may by rule, regulation or order provide for certain
18 waivers or exceptions with respect to such provisions, rules,
19 regulations or orders as the circumstances of each such festival or
20 fair may require, including, without limitation, the right to
21 revoke or suspend any license issued pursuant to this section prior
22 to any notice or hearing notwithstanding ~~the provisions of~~ section
23 twelve of this article: *Provided, however*, That under no
24 circumstances shall ~~the provisions of~~ subsection (c) or (d),

1 section twenty of this article be waived nor shall any exception be
2 granted with respect thereto.

3 A license issued under ~~the provisions of~~ this subsection and
4 the licensee holding such license shall not be subject to ~~the~~
5 ~~provisions of~~ subsection (g) of this section.

6 (i) (A) The commissioner may issue a special license for the
7 retail sale of wine in a professional baseball stadium. For the
8 purpose of this subsection, "professional baseball stadium" means
9 a facility constructed primarily for the use of a major or minor
10 league baseball franchisee affiliated with the National Association
11 of Professional Baseball Leagues, Inc., or its successor, and used
12 as a major or minor league baseball park. Any special license
13 issued pursuant to this subsection shall be for a term beginning on
14 the date of issuance and ending on the next following June 30, and
15 its fee is \$250 regardless of the length of the term of the
16 license. The application for the special license shall contain
17 information as the commissioner may reasonably require and must be
18 submitted to the commissioner at least thirty days prior to the
19 first day when wine is to be sold at the professional baseball
20 stadium. The special license may be issued in the name of the
21 baseball franchisee or the name of the primary food and beverage
22 vendor under contract with the baseball franchisee. These sales
23 must take place within the confines of the professional baseball
24 stadium, provided that the exterior of the area where wine sales

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

6 (B) A license issued under this subsection and the licensee
7 holding the license is subject to all other provisions of this
8 article and the rules and orders of the commissioner relating to
9 the special license: *Provided*, That the commissioner may by rule or
10 order grant certain waivers or exceptions to those rules or orders
11 as the circumstances of each such professional baseball stadium may
12 require, including, without limitation, the right to revoke or
13 suspend any license issued pursuant to this section prior to any
14 notice or hearing notwithstanding section twelve of this article:
15 *Provided, however*, That under no circumstances may subsection (c)
16 or (d), section twenty of this article be waived nor shall any
17 exception be granted concerning those subsections.

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

21 ~~(i)~~ (j) A license to sell wine granted to a private wine bed
22 and breakfast, private wine restaurant, private wine spa or a
23 private club under ~~the provisions of~~ this article entitles the
24 operator to sell and serve wine, for consumption on the premises of

1 the licensee, when such sale accompanies the serving of food or a
2 meal to its members and their guests in accordance with ~~the~~
3 ~~provisions of~~ this article: *Provided*, That a licensed private wine
4 bed and breakfast, private wine restaurant, private wine spa or a
5 private club may permit a person over twenty-one years of age to
6 purchase wine, consume wine and recork or reseal, using a tamper
7 resistant cork or seal, up to two separate bottles of unconsumed
8 wine in conjunction with serving of food or a meal to its members
9 and their guests in accordance with ~~the provisions of~~ this article
10 and in accordance with regulations promulgated by the commissioner
11 for the purpose of consumption of said wine off premises:
12 *Provided, however*, That for this article, food or a meal provided
13 by the private licensee means that the total food purchase,
14 excluding beverage purchases, taxes, gratuity or other fees is at
15 least \$15: *Provided further*, That a licensed private wine
16 restaurant or a private club may offer for sale for consumption off
17 the premises, sealed bottles of wine to its customers provided that
18 no more than one bottle is sold per each person over twenty-one
19 years of age, as verified by the private wine restaurant or private
20 club, for consumption off the premises. Such licensees are
21 authorized to keep and maintain on their premises a supply of wine
22 in such quantities as may be appropriate for the conduct of
23 operations thereof. Any sale of wine so made shall be subject to
24 all restrictions set forth in section twenty of this article. A

1 private wine restaurant may also be licensed as a Class A retail
2 dealer in nonintoxicating beer as provided by article sixteen,
3 chapter eleven of this code.

4 ~~(j)~~ (k) With respect to subsections (h), (i), ~~(n)~~ and ~~(o)~~ (j).
5 (o) and (p) of this section, the commissioner shall promulgate
6 legislative rules in accordance with ~~the provisions of~~ chapter
7 twenty-nine-a of this code with regard to the form of the
8 applications, the suitability of both the applicant and location of
9 the licensed premises and such other legislative rules deemed
10 necessary to carry the provisions of such subsections into effect.

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

17 ~~(l)~~ (m) The commissioner shall establish guidelines to permit
18 wines to be sold in all stores licensed for retail sales.

19 ~~(m)~~ (n) Wineries and farm wineries may advertise off premises
20 as provided in section seven, article twenty-two, chapter seventeen
21 of this code.

22 ~~(n)~~ (o) A wine specialty shop under this article may also hold
23 a wine sampling license authorizing the wine specialty shop to
24 conduct special wine sampling events at a licensed wine specialty

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

19 ~~(o)~~ (p) The commissioner may issue special one-day licenses to
20 duly organized, nonprofit corporations and associations allowing
21 the sale and serving of wine when raising money for athletic,
22 charitable, educational or religious purposes. The license
23 application shall contain information as the commissioner may
24 reasonably require and shall be submitted to the commissioner at

1 least thirty days prior to the event. Wines used during these
2 events may be donated by or purchased from a licensed retailer, a
3 distributor or a farm winery. Under no circumstances may ~~the~~
4 ~~provision of~~ subsection (c), section twenty of this article be
5 waived nor may any exception be granted with respect thereto.

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

NOTE: The purpose of this bill is to permit wine sales at professional baseball stadiums. The bill sets license fees. The bill defines the term " professional baseball stadium." The bill provides standards for licensing and authority for the commissioner to regulate such sales. The bill also grants rule-making authority.

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

be added.