

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



ENROLLED

COMMITTEE SUBSTITUTE FOR House Bill No. 4376

(By Delegates Brown, Craig, D. Poling,
R. Phillips, Hunt, Swartzmiller, Michael,
Skaff, Walters and Nelson)



Passed March 8, 2012

To Take Effect From Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 4376

(BY DELEGATES BROWN, CRAIG, D. POLING,
R. PHILLIPS, HUNT, SWARTZMILLER, MICHAEL,
SKAFF, WALTERS AND NELSON)

[Passed March 8, 2012; to take effect from passage.]

AN ACT 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.

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

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

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

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

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

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

30 (4) Two hundred fifty dollars per year for a wine
31 specialty shop license, in addition to any other licensing fees
32 paid by a winery or retailer holding such a license, except for
33 the amount of the license fee and the restriction to sales of

34 winery or farm winery wines, a winery or farm winery acting
35 as a wine specialty shop retailer is subject to all other
36 provisions of this article which are applicable to a wine
37 specialty shop retailer as defined in section two of this article;

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

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

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

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

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

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

61 (11) One hundred fifty dollars per year for a direct
62 shipper's license for a licensee who sells and ships only wine

63 and \$250 per for a direct shipper's license who ships and
64 sells wine, nonfortified dessert wine, port, sherry or Madeira
65 wines.

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

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

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

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

89 (f) A wine specialty shop under this article may also hold
90 a wine tasting license authorizing such retailer to serve
91 complimentary samples of wine in moderate quantities for
92 tasting. Such wine specialty shop shall organize a wine
93 taster's club, which has at least fifty duly elected or approved

94 dues-paying members in good standing. Such club shall meet on
95 the wine specialty shop's premises not more than one time per
96 week and shall either meet at a time when the premises are
97 closed to the general public, or shall meet in a separate
98 segregated facility on the premises to which the general public
99 is not admitted. Attendance at tastings shall be limited to duly
100 elected or approved dues-paying members and their guests.

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

106 (h) The commissioner may issue a special license for the
107 retail sale of wine at any festival or fair which is endorsed or
108 sponsored by the governing body of a municipality or a
109 county commission. Such special license shall be issued for
110 a term of no longer than ten consecutive days and the fee
111 therefor shall be \$250 regardless of the term of the license
112 unless the applicant is the manufacturer of said wine on a
113 winery or a farm winery as defined in section five-a, article
114 one of this chapter, in which event the fee shall be \$50 if the
115 event is held on the premises of the winery or farm winery.
116 The application for such license shall contain such
117 information as the commissioner may reasonably require and
118 shall be submitted to the commissioner at least thirty days
119 prior to the first day when wine is to be sold at such festival
120 or fair. A winery or a farm winery licensed under this
121 subsection may exhibit, conduct tastings, not to exceed a
122 reasonable serving, and may sell wine only for consumption
123 off the premises of such festival or fair. A special license
124 issued other than to a winery or a farm winery may be issued
125 to a "wine club" as defined herein below. The festival or fair
126 committee or the governing body shall designate a person to
127 organize a club under a name which includes the name of the

128 festival or fair and the words “wine club”. The license shall
129 be issued in the name of the wine club. A licensee may not
130 commence the sale of wine as provided in this subsection
131 until the wine club has at least fifty dues-paying members
132 who have been enrolled and to whom membership cards have
133 been issued. Thereafter, new members may be enrolled and
134 issued membership cards at any time during the period for
135 which the license is issued. A wine club licensed under the
136 provisions of this subsection may sell wine only to its
137 members, and in portions not to exceed eight ounces per
138 serving. Such sales shall take place on premises or in an area
139 cordoned or segregated so as to be closed to the general
140 public, and the general public shall not be admitted to such
141 premises or area. A wine club licensee under the provisions
142 of this subsection shall be authorized to serve complimentary
143 samples of wine in moderate quantities for tasting.

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

159 A license issued under the provisions of this subsection
160 and the licensee holding such license shall not be subject to
161 the provisions of subsection (g) of this section.

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

190 (B) A license issued under this subsection and the
191 licensee holding the license is subject to all other provisions
192 of this article and the rules and orders of the commissioner
193 relating to the special license: *Provided*, That the
194 commissioner may by rule or order grant certain waivers or
195 exceptions to those rules or orders as the circumstances of
196 each such professional baseball stadium may require,

197 including, without limitation, the right to revoke or suspend
198 any license issued pursuant to this section prior to any notice
199 or hearing notwithstanding sections twenty-seven and
200 twenty-eight of this article: *Provided, however,* That under no
201 circumstances may subsection (c) or (d), section twenty of
202 this article be waived nor shall any exception be granted
203 concerning those subsections.

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

208 (j) A license to sell wine granted to a private wine bed
209 and breakfast, private wine restaurant, private wine spa or a
210 private club under the provisions of this article entitles the
211 operator to sell and serve wine, for consumption on the
212 premises of the licensee, when such sale accompanies the
213 serving of food or a meal to its members and their guests in
214 accordance with the provisions of this article: *Provided,* That
215 a licensed private wine bed and breakfast, private wine
216 restaurant, private wine spa or a private club may permit a
217 person over twenty-one years of age to purchase wine,
218 consume wine and recork or reseal, using a tamper resistant
219 cork or seal, up to two separate bottles of unconsumed wine
220 in conjunction with serving of food or a meal to its members
221 and their guests in accordance with the provisions of this
222 article and in accordance with regulations promulgated by the
223 commissioner for the purpose of consumption of said wine
224 off premises: *Provided, however,* That for this article, food
225 or a meal provided by the private licensee means that the total
226 food purchase, excluding beverage purchases, taxes, gratuity
227 or other fees is at least \$15: *Provided further,* That a licensed
228 private wine restaurant or a private club may offer for sale for
229 consumption off the premises, sealed bottles of wine to its
230 customers provided that no more than one bottle is sold per

231 each person over twenty-one years of age, as verified by the
232 private wine restaurant or private club, for consumption off
233 the premises. Such licensees are authorized to keep and
234 maintain on their premises a supply of wine in such quantities
235 as may be appropriate for the conduct of operations thereof.
236 Any sale of wine so made shall be subject to all restrictions
237 set forth in section twenty of this article. A private wine
238 restaurant may also be licensed as a Class A retail dealer in
239 nonintoxicating beer as provided by article sixteen, chapter
240 eleven of this code.

241 (k) With respect to subsections (h), (i), (j), (o) and (p) of
242 this section, the commissioner shall promulgate legislative
243 rules in accordance with the provisions of chapter
244 twenty-nine-a of this code with regard to the form of the
245 applications, the suitability of both the applicant and location
246 of the licensed premises and such other legislative rules
247 deemed necessary to carry the provisions of such subsections
248 into effect.

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

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

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

260 (o) A wine specialty shop under this article may also hold
261 a wine sampling license authorizing the wine specialty shop

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

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

294 (q) The commissioner may issue special licenses to
295 heritage fairs and festivals allowing the sale, serving and

296 sampling of wine from a licensed farm winery. The license
297 application shall contain information required by the
298 commissioner and shall be submitted to the commissioner at
299 least thirty days prior to the event. Wines used during these
300 events may be donated by or purchased from a licensed farm
301 winery. Under no circumstances may the provision of
302 subsection (c), section twenty of this article be waived nor
303 may any exception be granted with respect thereto. The
304 commissioner shall propose rules for legislative approval in
305 accordance with article three, chapter twenty-nine-a of this
306 code to implement the provisions of this subsection.

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor