

COMMITTEE SUBSTITUTE

FOR

H. B. 4376

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

(Originating in the Committee on Finance)
[February 23, 2012]

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.

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 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 and
14 a private wine bed and breakfast, a private wine restaurant or
15 a private wine spa. No person may be licensed simultaneously
16 as a retailer and a private wine bed and breakfast, a private
17 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 license;

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

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

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

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

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

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

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

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

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

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

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

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

87 (f) A wine specialty shop under this article may also hold
88 a wine tasting license authorizing such retailer to serve
89 complimentary samples of wine in moderate quantities for
90 tasting. Such wine specialty shop shall organize a wine
91 taster's club, which has at least fifty duly elected or approved
92 dues-paying members in good standing. Such club shall meet
93 on the wine specialty shop's premises not more than one time
94 per week and shall either meet at a time when the premises

95 are closed to the general public, or shall meet in a separate
96 segregated facility on the premises to which the general
97 public is not admitted. Attendance at tastings shall be limited
98 to duly elected or approved dues-paying members and their
99 guests.

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

105 (h) The commissioner may issue a special license for the
106 retail sale of wine at any festival or fair which is endorsed or
107 sponsored by the governing body of a municipality or a
108 county commission. Such special license shall be issued for
109 a term of no longer than ten consecutive days and the fee
110 therefor shall be \$250 regardless of the term of the license
111 unless the applicant is the manufacturer of said wine on a
112 winery or a farm winery as defined in section five-a, article
113 one of this chapter, in which event the fee shall be \$50 if the

114 event is held on the premises of the winery or farm winery.
115 The application for such license shall contain such
116 information as the commissioner may reasonably require and
117 shall be submitted to the commissioner at least thirty days
118 prior to the first day when wine is to be sold at such festival
119 or fair. A winery or a farm winery licensed under this
120 subsection may exhibit, conduct tastings, not to exceed a
121 reasonable serving, and may sell wine only for consumption
122 off the premises of such festival or fair. A special license
123 issued other than to a winery or a farm winery may be issued
124 to 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
128 be issued in the name of the wine club. A licensee may not
129 commence the sale of wine as provided in this subsection
130 until the wine club has at least fifty dues-paying members
131 who have been enrolled and to whom membership cards have
132 been issued. Thereafter, new members may be enrolled and

133 issued membership cards at any time during the period for
134 which the license is issued. A wine club licensed under the
135 provisions of this subsection may sell wine only to its
136 members, and in portions not to exceed eight ounces per
137 serving. Such sales shall take place on premises or in an area
138 cordoned or segregated so as to be closed to the general
139 public, and the general public shall not be admitted to such
140 premises or area. A wine club licensee under the provisions
141 of this subsection shall be authorized to serve complimentary
142 samples of wine in moderate quantities for tasting.

143 A license issued under the provisions of this subsection
144 and the licensee holding such license shall be subject to all
145 other provisions of this article and the rules and orders of the
146 commissioner relating to such special license: *Provided,*
147 That the commissioner may by rule, regulation or order
148 provide for certain waivers or exceptions with respect to such
149 provisions, rules, regulations or orders as the circumstances
150 of each such festival or fair may require, including, without
151 limitation, the right to revoke or suspend any license issued

152 pursuant to this section prior to any notice or hearing
153 notwithstanding the provisions of section ~~twelve~~ twenty-
154 seven and twenty-eight of this article: *Provided, however,*
155 That under no circumstances shall the provisions of
156 subsection (c) or (d), section twenty of this article be waived
157 nor shall any exception be granted with respect thereto.

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

161 (i) (A) The commissioner may issue a special license for
162 the retail sale of wine in a professional baseball stadium. A
163 license to sell wine granted pursuant to this subsection
164 entitles the licensee to sell and serve wine, for consumption
165 in a professional baseball stadium. For the purpose of this
166 subsection, "professional baseball stadium" means a facility
167 constructed primarily for the use of a major or minor league
168 baseball franchisee affiliated with the National Association
169 of Professional Baseball Leagues, Inc., or its successor, and
170 used as a major or minor league baseball park. Any special

171 license issued pursuant to this subsection shall be for a term
172 beginning on the date of issuance and ending on the next
173 following June 30, and its fee is \$250 regardless of the length
174 of the term of the license. The application for the special
175 license shall contain information as the commissioner may
176 reasonably require and must be submitted to the
177 commissioner at least thirty days prior to the first day when
178 wine is to be sold at the professional baseball stadium. The
179 special license may be issued in the name of the baseball
180 franchisee or the name of the primary food and beverage
181 vendor under contract with the baseball franchisee. These
182 sales must take place within the confines of the professional
183 baseball stadium, provided that the exterior of the area where
184 wine sales may occur are surrounded by a fence or other
185 barrier prohibiting entry except upon the franchisee's express
186 permission, and under the conditions and restrictions
187 established by the franchisee, so that the wine sales area is
188 closed to free and unrestricted entry by the general public.

189 (B) A license issued under this subsection and the
190 licensee holding the license is subject to all other provisions
191 of this article and the rules and orders of the commissioner
192 relating to the special license: *Provided*, That the
193 commissioner may by rule or order grant certain waivers or
194 exceptions to those rules or orders as the circumstances of
195 each such professional baseball stadium may require,
196 including, without limitation, the right to revoke or suspend
197 any license issued pursuant to this section prior to any notice
198 or hearing notwithstanding sections twenty-seven and
199 twenty-eight of this article: *Provided, however*, That under no
200 circumstances may subsection (c) or (d), section twenty of
201 this article be waived nor shall any exception be granted
202 concerning those subsections.

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

206 (i) (j) A license to sell wine granted to a private wine bed
207 and breakfast, private wine restaurant, private wine spa or a

208 private club under the provisions of this article entitles the
209 operator to sell and serve wine, for consumption on the
210 premises of the licensee, when such sale accompanies the
211 serving of food or a meal to its members and their guests in
212 accordance with the provisions of this article: *Provided*, That
213 a licensed private wine bed and breakfast, private wine
214 restaurant, private wine spa or a private club may permit a
215 person over twenty-one years of age to purchase wine,
216 consume wine and recork or reseal, using a tamper resistant
217 cork or seal, up to two separate bottles of unconsumed wine
218 in conjunction with serving of food or a meal to its members
219 and their guests in accordance with the provisions of this
220 article and in accordance with regulations promulgated by the
221 commissioner for the purpose of consumption of said wine
222 off premises: *Provided, however*, That for this article, food
223 or a meal provided by the private licensee means that the total
224 food purchase, excluding beverage purchases, taxes, gratuity
225 or other fees is at least \$15: *Provided further*, That a licensed
226 private wine restaurant or a private club may offer for sale for

227 consumption off the premises, sealed bottles of wine to its
228 customers provided that no more than one bottle is sold per
229 each person over twenty-one years of age, as verified by the
230 private wine restaurant or private club, for consumption off
231 the premises. Such licensees are authorized to keep and
232 maintain on their premises a supply of wine in such quantities
233 as may be appropriate for the conduct of operations thereof.
234 Any sale of wine so made shall be subject to all restrictions
235 set forth in section twenty of this article. A private wine
236 restaurant may also be licensed as a Class A retail dealer in
237 nonintoxicating beer as provided by article sixteen, chapter
238 eleven of this code.

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

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

253 ~~(h)~~ (m) The commissioner shall establish guidelines to
254 permit wines to be sold in all stores licensed for retail sales.

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

258 ~~(n)~~ (o) A wine specialty shop under this article may also
259 hold a wine sampling license authorizing the wine specialty
260 shop to conduct special wine sampling events at a licensed
261 wine specialty shop location during regular hours of business.
262 The wine specialty shop may serve up to three
263 complimentary samples of wine, consisting of no more than
264 one ounce each, to any one consumer in one day. Persons

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

281 ~~(o)~~ (p) The commissioner may issue special one-day
282 licenses to duly organized, nonprofit corporations and
283 associations allowing the sale and serving of wine when

284 raising money for athletic, charitable, educational or religious
285 purposes. The license application shall contain information
286 as the commissioner may reasonably require and shall be
287 submitted to the commissioner at least thirty days prior to the
288 event. Wines used during these events may be donated by or
289 purchased from a licensed retailer, a distributor or a farm
290 winery. Under no circumstances may the provision of
291 subsection (c), section twenty of this article be waived nor
292 may any exception be granted with respect thereto.

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

303 commissioner shall propose rules for legislative approval in
304 accordance with article three, chapter twenty-nine-a of this
305 code to implement the provisions of this subsection.