

Senate Bill No. 470

(By Senators Miller, Williams, Stollings, Kessler (Mr. President)
and Beach)

[Introduced March 7, 2013;
referred to the Committee on Agriculture and Rural Development;
and then to the Committee on the Judiciary.]

A BILL to amend and reenact §60-8-3 of the Code of West Virginia,
1931, as amended, relating to permitting farm wineries to sell
samples and wine during the operation of fairs or festivals on
Sunday mornings.

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
11 be licensed simultaneously as a supplier and a private wine
12 bed and breakfast, private wine restaurant or a private wine
13 spa. No person may be licensed simultaneously as a
14 distributor and a private wine bed and breakfast, a private
15 wine restaurant or a private wine spa. No person may be
16 licensed simultaneously as a retailer and a private wine bed
17 and 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
38 article;

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

41 (6) One hundred fifty dollars per year for a private wine
42 bed and breakfast license, and each separate bed and
43 breakfast from which a licensee sells wine shall be separately

44 licensed and there shall be collected with respect to each ~~such~~
45 location the annual license fee of \$150 as herein provided;

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

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

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

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

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

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

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

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

79 (e) No retailer may be licensed as a Class A retail dealer
80 in nonintoxicating beer as provided by article sixteen, chapter

81 eleven of this code: *Provided*, That a delicatessen, a caterer
82 or party supply store which is a grocery store as defined in
83 section two of this article and which is licensed as a Class A
84 retail dealer in nonintoxicating beer may be a retailer under
85 this article: *Provided, however*, That any delicatessen,
86 caterer or party supply store licensed in both ~~such~~ capacities
87 must maintain average monthly sales exclusive of sales of
88 wine and nonintoxicating beer which exceed the average
89 monthly sales of nonintoxicating beer.

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

100 public is not admitted. Attendance at tastings shall be limited
101 to duly elected or approved dues-paying members and their
102 guests.

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

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

119 information as the commissioner may reasonably require and
120 shall be submitted to the commissioner at least thirty days
121 prior to the first day when wine is to be sold at ~~such~~ the
122 festival or fair. A winery or a farm winery licensed under
123 this subsection may exhibit, conduct tastings or sell samples,
124 not to exceed a reasonable serving of three ounces, and may
125 sell wine ~~only~~ samples for consumption ~~off~~ on the premises
126 during the operation of such a festival or fair: *Provided, That*
127 for licensed wineries or farm wineries at a licensed festival or
128 fair the tastings, samples and off-premises sales shall occur
129 under the hours of operation as required in this article, except
130 that on Sunday tastings, samples and off-premises sales are
131 unlawful between the hours of 2:00 a. m. and 10:00 a. m. A
132 special license issued other than to a winery or a farm winery
133 may be issued to a “wine club” as defined herein below. The
134 festival or fair committee or the governing body shall
135 designate a person to organize a club under a name which
136 includes the name of the festival or fair and the words “wine
137 club”. The license shall be issued in the name of the wine

138 club. A licensee may not commence the sale of wine as
139 provided in this subsection until the wine club has at least
140 fifty dues-paying members who have been enrolled and to
141 whom membership cards have been issued. Thereafter, new
142 members may be enrolled and issued membership cards at
143 any time during the period for which the license is issued. A
144 wine club licensed under the provisions of this subsection
145 may sell wine only to its members, and in portions not to
146 exceed eight ounces per serving. ~~Such~~ The sales shall take
147 place on premises or in an area cordoned or segregated so as
148 to be closed to the general public, and the general public shall
149 not be admitted to ~~such~~ the premises or area. A wine club
150 licensee under the provisions of this subsection shall be
151 authorized to serve complimentary samples of wine in
152 moderate quantities for tasting.

153 A license issued under the provisions of this subsection
154 and the licensee holding ~~such~~ the license shall be subject to
155 all other provisions of this article and the rules and orders of
156 the commissioner relating to ~~such~~ the special license:

157 *Provided*, That the commissioner may by rule, regulation or
158 order provide for certain waivers or exceptions with respect
159 to ~~such~~ the provisions, rules, regulations or orders as the
160 circumstances of each ~~such~~ festival or fair may require,
161 including, without limitation, the right to revoke or suspend
162 any license issued pursuant to this section prior to any notice
163 or hearing notwithstanding the provisions of section
164 twenty-seven and twenty-eight of this article: *Provided*,
165 *however*, That under no circumstances shall the provisions of
166 subsection (c) or (d), section twenty of this article be waived
167 nor shall any exception be granted with respect thereto.

168 A license issued under the provisions of this subsection
169 and the licensee holding ~~such~~ the license ~~shall not be~~ is not
170 subject to the provisions of subsection (g) of this section.

171 (i) (A) The commissioner may issue a special license for
172 the retail sale of wine in a professional baseball stadium. A
173 license to sell wine granted pursuant to this subsection
174 entitles the licensee to sell and serve wine, for consumption

175 in a professional baseball stadium. For the purpose of this
176 subsection, “professional baseball stadium” means a facility
177 constructed primarily for the use of a major or minor league
178 baseball franchisee affiliated with the National Association
179 of Professional Baseball Leagues, Inc., or its successor, and
180 used as a major or minor league baseball park. Any special
181 license issued pursuant to this subsection shall be for a term
182 beginning on the date of issuance and ending on the next
183 following June 30, and its fee is \$250 regardless of the length
184 of the term of the license. The application for the special
185 license shall contain information as the commissioner may
186 reasonably require and must be submitted to the
187 commissioner at least thirty days prior to the first day when
188 wine is to be sold at the professional baseball stadium. The
189 special license may be issued in the name of the baseball
190 franchisee or the name of the primary food and beverage
191 vendor under contract with the baseball franchisee. These
192 sales must take place within the confines of the professional

193 baseball stadium, provided that the exterior of the area where
194 wine sales may occur are surrounded by a fence or other
195 barrier prohibiting entry except upon the franchisee's express
196 permission, and under the conditions and restrictions
197 established by the franchisee, so that the wine sales area is
198 closed to free and unrestricted entry by the general public.

199 (B) A license issued under this subsection and the
200 licensee holding the license is subject to all other provisions
201 of this article and the rules and orders of the commissioner
202 relating to the special license: *Provided*, That the
203 commissioner may by rule or order grant certain waivers or
204 exceptions to those rules or orders as the circumstances of
205 each ~~such~~ professional baseball stadium may require,
206 including, without limitation, the right to revoke or suspend
207 any license issued pursuant to this section prior to any notice
208 or hearing notwithstanding sections twenty-seven and
209 twenty-eight of this article: *Provided, however*, That under
210 no circumstances may subsection (c) or (d), section twenty of

211 this article be waived nor shall any exception be granted
212 concerning those subsections.

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

217 (j) A license to sell wine granted to a private wine bed
218 and breakfast, private wine restaurant, private wine spa or a
219 private club under the provisions of this article entitles the
220 operator to sell and serve wine, for consumption on the
221 premises of the licensee, when ~~such~~ the sale accompanies the
222 serving of food or a meal to its members and their guests in
223 accordance with the provisions of this article: *Provided*, That
224 a licensed private wine bed and breakfast, private wine
225 restaurant, private wine spa or a private club may permit a
226 person over twenty-one years of age to purchase wine,
227 consume wine and recork or reseal, using a tamper resistant
228 cork or seal, up to two separate bottles of unconsumed wine
229 in conjunction with serving of food or a meal to its members

230 and their guests in accordance with the provisions of this
231 article and in accordance with regulations promulgated by the
232 commissioner for the purpose of consumption of said wine
233 off premises: *Provided, however,* That for this article, food
234 or a meal provided by the private licensee means that the
235 total food purchase, excluding beverage purchases, taxes,
236 gratuity or other fees is at least \$15: *Provided further,* That
237 a licensed private wine restaurant or a private club may offer
238 for sale for consumption off the premises, sealed bottles of
239 wine to its customers provided that no more than one bottle
240 is sold per each person over twenty-one years of age, as
241 verified by the private wine restaurant or private club, for
242 consumption off the premises. Such licensees are authorized
243 to keep and maintain on their premises a supply of wine in
244 ~~such~~ quantities as may be appropriate for the conduct of
245 operations thereof. Any sale of wine so made shall be
246 subject to all restrictions set forth in section twenty of this
247 article. A private wine restaurant may also be licensed as a
248 Class A retail dealer in nonintoxicating beer as provided by
249 article sixteen, chapter eleven of this code.

250 (k) With respect to subsections (h), (i), (j), (o) and (p) of
251 this section, the commissioner shall promulgate legislative
252 rules in accordance with the provisions of chapter
253 twenty-nine-a of this code with regard to the form of the
254 applications, the suitability of both the applicant and location
255 of the licensed premises and ~~such~~ other legislative rules
256 deemed necessary to carry the provisions of ~~such~~ the
257 subsections into effect.

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

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

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

269 (o) A wine specialty shop under this article may also hold
270 a wine sampling license authorizing the wine specialty shop
271 to conduct special wine sampling events at a licensed wine
272 specialty shop location during regular hours of business. The
273 wine specialty shop may serve up to three complimentary
274 samples of wine, consisting of no more than one ounce each,
275 to any one consumer in one day. Persons serving the
276 complimentary samples must be twenty-one years of age and
277 an authorized representative of the licensed wine specialty
278 shop, winery, farm winery or a representative of a distributor
279 or registered supplier. Distributor and supplier
280 representatives attending wine sampling events must be
281 registered with the commissioner. No licensee, employee or
282 representative may furnish, give or serve complimentary
283 samples of wine to any person less than twenty-one years of
284 age or to a person who is physically incapacitated due to the
285 consumption of alcoholic liquor or the use of drugs. The
286 wine specialty shop shall notify and secure permission from
287 the commissioner for all wine sampling events one month
288 prior to the event. Wine sampling events may not exceed six

289 hours per calendar day. Licensees must purchase all wines
290 used during these events from a licensed farm winery or a
291 licensed distributor.

292 (p) The commissioner may issue special one-day licenses
293 to duly organized, nonprofit corporations and associations
294 allowing the sale and serving of wine when raising money for
295 athletic, charitable, educational or religious purposes. The
296 license application shall contain information as the
297 commissioner may reasonably require and shall be submitted
298 to the commissioner at least thirty days prior to the event.
299 Wines used during these events may be donated by or
300 purchased from a licensed retailer, a distributor or a 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.

304 (q) The commissioner may issue special licenses to
305 heritage fairs and festivals allowing the sale, serving and
306 sampling of wine from a licensed farm winery. The license
307 application shall contain information required by the
308 commissioner and shall be submitted to the commissioner at

309 least thirty days prior to the event. Wines used during these
310 events may be donated by or purchased from a licensed farm
311 winery. Under no circumstances may the provision of
312 subsection (c), section twenty of this article be waived nor
313 may any exception be granted with respect thereto. The
314 commissioner shall propose rules for legislative approval in
315 accordance with article three, chapter twenty-nine-a of this
316 code to implement the provisions of this subsection.

(NOTE: The purpose of this bill is to permit farm wineries to sell samples and wine during the operation of fairs or festivals and on Sunday mornings of those events.

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

AGRICULTURE AND RURAL DEVELOPMENT COMMITTEE AMENDMENT

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Senate Bill No. 470--A BILL to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating generally to permitting wineries and farm wineries to sell samples and wine at licensed fairs or festivals on Sunday mornings; and limiting samples to three ounces.