

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4412**

4 (By Delegates Skaff, Barrett, Walters, Guthrie, Sponaugle, E.
5 Nelson, R. Phillips, Gearheart and Reynolds)

6 (By Request of the Alcohol Beverage Control Commissioner)

7 (Originating in the Committee on the Judiciary)

8 [February 10, 2014]

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §11-16-11b; and to
12 amend and reenact §60-8-3 of said code, all relating to
13 creating a special one-day license for charitable events to
14 sell certain alcoholic beverages; creating a one-day special
15 one-day license for authorized nonprofit entities to sell
16 nonintoxicating beer at charitable events; clarifying the
17 existing one-day special license for authorized nonprofit
18 entities to sell wine at charitable events; establishing a fee
19 for the special one-day licenses; and rulemaking.

20 Be it enacted by the Legislature of West Virginia:

21 That the Code of West Virginia, 1931, as amended, be amended
22 by adding thereto a new section, designated §11-16-11b, to read as
23 follows:

24 **CHAPTER 11. TAXATION.**

25 **ARTICLE 16. NONINTOXICATING BEER.**

26 **§11-16-11b. One-day license to sell nonintoxicating beer;**
27 **waivers; rule-making.**

28 (a) The commissioner may issue a special one-day license to be

1 designated a Class S1 license for the retail sale of
2 nonintoxicating beer to a duly organized nonprofit corporation,
3 limited liability entity or association allowing the sale and
4 selling of nonintoxicating beer when raising money for artistic,
5 athletic, charitable, charitable, educational or religious
6 purposes. The special license is for no longer than one day and
7 the fee is \$25. The nonintoxicating beer used during the event may
8 be donated by or purchased from a licensed retailer, distributor or
9 resident brewer. The license application shall be submitted to the
10 commissioner at least fifteen days prior to the event and contain
11 information as the commissioner may require.

12 (b) A license issued under this section and the licensee
13 remain subject to all other provisions of this article and the
14 rules and orders of the commissioner relating to the special
15 license: *Provided*, That the commissioner may by rule or order
16 provide for certain waivers or exceptions as the circumstances of
17 each event may require, including, without limitation, the right to
18 revoke or suspend any license issued pursuant to this section prior
19 to any notice or hearing, notwithstanding section twenty-four of
20 this article: *Provided, however*, That under no circumstances may
21 the provisions of subdivision (1), (2) or (3), subsection (a),
22 section eighteen of this article, be waived, nor may any exception
23 be granted with respect thereto.

24 (c) The commissioner shall propose rules for legislative
25 approval in accordance with article three, chapter twenty-nine-a of
26 this code to implement this section.

27 **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

28 **ARTICLE 8. SALE OF WINES.**

1 **§60-8-3. Licenses; fees; general restrictions.**

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

18 (b) The commissioner shall collect an annual fee for licenses
19 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 distributor's
23 license and each separate warehouse or other facility from which a
24 distributor sells, transfers or delivers wine shall be separately
25 licensed and there shall be collected with respect to each location
26 the annual license fee of \$2,500 as herein provided;

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

1 (4) Two hundred fifty dollars per year for a wine specialty
2 shop license, in addition to any other licensing fees paid by a
3 winery or retailer holding a license, except for the amount of the
4 license fee and the restriction to sales of winery or farm winery
5 wines, a winery or farm winery acting as a wine specialty shop
6 retailer is subject to all other provisions of this article which
7 are applicable to a wine specialty shop retailer as defined in
8 section two of this article;

9 (5) One hundred fifty dollars per year for a wine tasting
10 license;

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

16 (7) Two hundred fifty dollars per year for a private wine
17 restaurant license, and each separate restaurant from which a
18 licensee sells wine shall be separately licensed and there shall be
19 collected with respect to each location the annual license fee of
20 \$250 as herein provided;

21 (8) One hundred fifty dollars per year for a private wine spa
22 license and each separate private wine spa from which a licensee
23 sells wine shall be separately licensed and there shall be
24 collected with respect to each location the annual license fee of
25 \$150 as herein provided;

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

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

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

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

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

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

19 (e) No retailer may be licensed as a Class A retail dealer in
20 nonintoxicating beer as provided by article sixteen, chapter eleven
21 of this code: *Provided*, That a delicatessen, a caterer or party
22 supply store which is a grocery store as defined in section two of
23 this article and which is licensed as a Class A retail dealer in
24 nonintoxicating beer may be a retailer under this article:
25 *Provided, however*, That any delicatessen, caterer or party supply
26 store licensed in both capacities must maintain average monthly
27 sales exclusive of sales of wine and nonintoxicating beer which
28 exceed the average monthly sales of nonintoxicating beer.

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

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

17 (h) The commissioner may issue a special license for the
18 retail sale of wine at any festival or fair which is endorsed or
19 sponsored by the governing body of a municipality or a county
20 commission. Such special license shall be issued for a term of no
21 longer than ten consecutive days and the fee therefor shall be \$250
22 regardless of the term of the license unless the applicant is the
23 manufacturer of said wine on a winery or a farm winery as defined
24 in section five-a, article one of this chapter, in which event the
25 fee shall be \$50 if the event is held on the premises of the winery
26 or farm winery. The application for the license shall contain
27 information as the commissioner may reasonably require and shall be
28 submitted to the commissioner at least thirty days prior to the

1 first day when wine is to be sold at the festival or fair. A
2 winery or a farm winery licensed under this subsection may exhibit,
3 conduct tastings or sell samples, not to exceed a reasonable
4 serving of three ounces, and may sell wine samples for consumption
5 on the premises during the operation of a festival or fair:
6 *Provided*, That for licensed wineries or farm wineries at a licensed
7 festival or fair the tastings, samples and off-premises sales shall
8 occur under the hours of operation as required in this article,
9 except that on Sunday tastings, samples and off-premises sales are
10 unlawful between the hours of 2:00 a. m. and 10:00 a. m. A special
11 license issued other than to a winery or a farm winery may be
12 issued to a "wine club" as defined herein below. The festival or
13 fair committee or the governing body shall designate a person to
14 organize a club under a name which includes the name of the
15 festival or fair and the words "wine club". The license shall be
16 issued in the name of the wine club. A licensee may not commence
17 the sale of wine as provided in this subsection until the wine club
18 has at least fifty dues-paying members who have been enrolled and
19 to whom membership cards have been issued. Thereafter, new members
20 may be enrolled and issued membership cards at any time during the
21 period for which the license is issued. A wine club licensed under
22 the provisions of this subsection may sell wine only to its
23 members, and in portions not to exceed eight ounces per serving.
24 The sales shall take place on premises or in an area cordoned or
25 segregated so as to be closed to the general public, and the
26 general public shall not be admitted to the premises or area. A
27 wine club licensee under the provisions of this subsection shall be
28 authorized to serve complimentary samples of wine in moderate

1 quantities for tasting.

2 A license issued under the provisions of this subsection and
3 the licensee holding the license shall be subject to all other
4 provisions of this article and the rules and orders of the
5 commissioner relating to the special license: *Provided*, That the
6 commissioner may by rule, regulation or order provide for certain
7 waivers or exceptions with respect to the provisions, rules,
8 regulations or orders as the circumstances of each festival or fair
9 may require, including, without limitation, the right to revoke or
10 suspend any license issued pursuant to this section prior to any
11 notice or hearing notwithstanding the provisions of section
12 twenty-seven and twenty-eight of this article: *Provided, however*,
13 That under no circumstances shall the provisions of subsection (c)
14 or (d), section twenty of this article be waived nor shall any
15 exception be granted with respect thereto.

16 A license issued under the provisions of this subsection and
17 the licensee holding the license is not subject to the provisions
18 of subsection (g) of this section.

19 (i) (A) The commissioner may issue a special license for the
20 retail sale of wine in a professional baseball stadium. A license
21 to sell wine granted pursuant to this subsection entitles the
22 licensee to sell and serve wine, for consumption in a professional
23 baseball stadium. For the purpose of this subsection,
24 "professional baseball stadium" means a facility constructed
25 primarily for the use of a major or minor league baseball
26 franchisee affiliated with the National Association of Professional
27 Baseball Leagues, Inc., or its successor, and used as a major or
28 minor league baseball park. Any special license issued pursuant to

1 this subsection shall be for a term beginning on the date of
2 issuance and ending on the next following June 30, and its fee is
3 \$250 regardless of the length of the term of the license. The
4 application for the special license shall contain information as
5 the commissioner may reasonably require and must be submitted to
6 the commissioner at least thirty days prior to the first day when
7 wine is to be sold at the professional baseball stadium. The
8 special license may be issued in the name of the baseball
9 franchisee or the name of the primary food and beverage vendor
10 under contract with the baseball franchisee. These sales must take
11 place within the confines of the professional baseball stadium,
12 provided that the exterior of the area where wine sales may occur
13 are surrounded by a fence or other barrier prohibiting entry except
14 upon the franchisee's express permission, and under the conditions
15 and restrictions established by the franchisee, so that the wine
16 sales area is closed to free and unrestricted entry by the general
17 public.

18 (B) A license issued under this subsection and the licensee
19 holding the license is subject to all other provisions of this
20 article and the rules and orders of the commissioner relating to
21 the special license: *Provided*, That the commissioner may by rule or
22 order grant certain waivers or exceptions to those rules or orders
23 as the circumstances of each professional baseball stadium may
24 require, including, without limitation, the right to revoke or
25 suspend any license issued pursuant to this section prior to any
26 notice or hearing notwithstanding sections twenty-seven and
27 twenty-eight of this article: *Provided, however*, That under no
28 circumstances may subsection (c) or (d), section twenty of this

1 article be waived nor shall any exception be granted concerning
2 those subsections.

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

6 (j) A license to sell wine granted to a private wine bed and
7 breakfast, private wine restaurant, private wine spa or a private
8 club under the provisions of this article entitles the operator to
9 sell and serve wine, for consumption on the premises of the
10 licensee, when the sale accompanies the serving of food or a meal
11 to its members and their guests in accordance with the provisions
12 of this article: *Provided*, That a licensed private wine bed and
13 breakfast, private wine restaurant, private wine spa or a private
14 club may permit a person over twenty-one years of age to purchase
15 wine, consume wine and recork or reseal, using a tamper resistant
16 cork or seal, up to two separate bottles of unconsumed wine in
17 conjunction with serving of food or a meal to its members and their
18 guests in accordance with the provisions of this article and in
19 accordance with regulations promulgated by the commissioner for the
20 purpose of consumption of said wine off premises: *Provided*,
21 *however*, That for this article, food or a meal provided by the
22 private licensee means that the total food purchase, excluding
23 beverage purchases, taxes, gratuity or other fees is at least \$15:
24 *Provided further*, That a licensed private wine restaurant or a
25 private club may offer for sale for consumption off the premises,
26 sealed bottles of wine to its customers provided that no more than
27 one bottle is sold per each person over twenty-one years of age, as
28 verified by the private wine restaurant or private club, for

1 consumption off the premises. Such licensees are authorized to
2 keep and maintain on their premises a supply of wine in quantities
3 as may be appropriate for the conduct of operations thereof. Any
4 sale of wine so made shall be subject to all restrictions set forth
5 in section twenty of this article. A private wine restaurant may
6 also be licensed as a Class A retail dealer in nonintoxicating beer
7 as provided by article sixteen, chapter eleven of this code.

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

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

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

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

26 (o) A wine specialty shop under this article may also hold a
27 wine sampling license authorizing the wine specialty shop to
28 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 (p) The commissioner may issue special one-day licenses to
20 duly organized, nonprofit corporations, ~~and~~ associations, and
21 limited liability entities allowing the sale and serving of wine
22 when raising money for artistic, athletic, charitable, cultural,
23 educational or religious purposes. The non-refundable fee shall be
24 twenty-five dollars for the one-day license. The license
25 application shall contain information as the commissioner may
26 reasonably require and shall be submitted to the commissioner at
27 least ~~thirty~~ fifteen days prior to the event. Wines used during
28 these events may be donated by or purchased from a licensed

1 retailer, a distributor or a farm winery. Under no circumstances
2 may the provision of subsection (c), section twenty of this article
3 be waived nor may any exception be granted with respect thereto.

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