

**WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014**



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 450

(SENATORS WALTERS, BLAIR, CARMICHAEL, McCABE,
PALUMBO AND WELLS, *ORIGINAL SPONSORS*)

[PASSED MARCH 8, 2014; IN EFFECT FROM PASSAGE.]

SB450

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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**(SENATORS WALTERS, BLAIR, CARMICHAEL, MCCABE, PALUMBO
AND WELLS, *original sponsors*)**

[Passed March 8, 2014; in effect from passage.]

AN ACT to amend and reenact §60-1-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60-8-3 of said code, all relating to the licensed sale and consumption of alcoholic beverages in outdoor settings adjacent to public places; relating to the sale of liquors in liquors in outdoor dining areas adjoining an ABCA-licensed facility; permitting the sale of wine at certain college and university sports stadiums; establishing the conditions under which wine may be sold; setting a licensing fee; establishing who may hold a license; stating where wine may be served; granting the authority to grant waivers and exceptions and to revoke licenses; defining a term; authorizing rulemaking; and clarifying the definition of public place as it relates to such special licenses.

Be it enacted by the Legislature of West Virginia:

That §60-1-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §60-8-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

1 For the purposes of this chapter:

2 "Alcohol" shall mean ethyl alcohol whatever its origin
3 and shall include synthetic ethyl alcohol but not denatured
4 alcohol.

5 "Beer" shall mean any beverage obtained by the
6 fermentation of barley, malt, hops or any other similar
7 product or substitute and containing more alcohol than that of
8 nonintoxicating beer.

9 "Nonintoxicating beer" shall mean any beverage obtained
10 by the fermentation of barley, malt, hops or similar products
11 or substitute and containing not more alcohol than that
12 specified by section two, article sixteen, chapter eleven of
13 this code.

14 "Wine" shall mean any alcoholic beverage obtained by
15 the fermentation of the natural content of fruits, or other
16 agricultural products, containing sugar.

17 "Spirits" shall mean any alcoholic beverage obtained by
18 distillation and mixed with potable water and other
19 substances in solution and includes brandy, rum, whiskey,
20 cordials and gin.

21 "Alcoholic liquor" shall include alcohol, beer, wine and
22 spirits and any liquid or solid capable of being used as a
23 beverage, but shall not include nonintoxicating beer.

24 "Original package" shall mean any closed or sealed
25 container or receptacle used for holding alcoholic liquor.

26 "Sale" shall mean any transfer, exchange or barter in any
27 manner or by any means, for a consideration, and shall

28 include all sales made by principal, proprietor, agent or
29 employee.

30 "Selling" shall include solicitation or receipt of orders;
31 possession for sale; and possession with intent to sell.

32 "Person" shall mean an individual, firm, partnership,
33 limited partnership, corporation or voluntary association.

34 "Manufacture" means to distill, rectify, ferment, brew,
35 make, mix, concoct, process, blend, bottle or fill an original
36 package with any alcoholic liquor.

37 "Manufacturer" shall mean any person engaged in the
38 manufacture of any alcoholic liquor, and among others
39 includes a distiller, a rectifier, a wine maker and a brewer.

40 "Brewery" shall mean an establishment where beer is
41 manufactured or in any way prepared.

42 "Winery" shall mean an establishment where wine is
43 manufactured or in any way prepared.

44 "Distillery" shall mean an establishment where alcoholic
45 liquor other than wine or beer is manufactured or in any way
46 prepared.

47 "Public place" shall mean any place, building or
48 conveyance to which the public has, or is permitted to have
49 access, including restaurants, soda fountains, hotel dining
50 rooms, lobbies and corridors of hotels and any highway,
51 street, lane, park or place of public resort or amusement:
52 *Provided*, That the term "public place" shall not mean or
53 include any of the above-named places or any portion or
54 portions thereof which qualify and are licensed under the
55 provisions of this chapter to sell alcoholic liquors for
56 consumption on the premises: *Provided, however*, That the

57 term "public place" shall not mean or include any legally
58 demarcated area designated solely for the consumption of
59 beverages and freshly prepared food that directly connects
60 and adjoins any portion or portions of a premises that
61 qualifies and is licensed under the provisions of this chapter
62 to sell alcoholic liquors for consumption thereupon: *Provided*
63 *further*, That the term "public place" shall also not include a
64 facility constructed primarily for the use of a Division I
65 college that is a member of the National Collegiate Athletic
66 Association, or its successor, and used as a football,
67 basketball, baseball, soccer or other Division I sports stadium
68 which holds a special license to sell wine pursuant to the
69 provisions of section three, article eight of this chapter, in the
70 designated areas of sale and consumption of wine and other
71 restrictions established by that section and the terms of the
72 special license issued thereunder.

73 "State liquor store" shall mean a store established and
74 operated by the commission under this chapter for the sale of
75 alcoholic liquor in the original package for consumption off
76 the premises.

77 "An agency" shall mean a drugstore, grocery store or
78 general store designated by the commission as a retail
79 distributor of alcoholic liquor for the West Virginia Alcohol
80 Beverage Control Commissioner.

81 "Department" shall mean the organization through which
82 the commission exercises powers imposed upon it by this
83 chapter.

84 "Commissioner" or "commission" shall mean the West
85 Virginia Alcohol Beverage Control Commissioner.

86 "Intoxicated" shall mean having one's faculties impaired
87 by alcohol or other drugs to the point where physical or
88 mental control or both are markedly diminished.

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 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 location the annual license fee of \$2,500
27 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 a license, except for the
33 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 breakfast
42 from which a licensee sells wine shall be separately licensed
43 and there shall be collected with respect to each location the
44 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 location the annual license
49 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 location the annual license
54 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 sells
64 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 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 the 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
95 on the wine specialty shop's premises not more than one time
96 per week and shall either meet at a time when the premises
97 are closed to the general public, or shall meet in a separate
98 segregated facility on the premises to which the general
99 public is not admitted. Attendance at tastings shall be limited
100 to duly elected or approved dues-paying members and their
101 guests.

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

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

128 hours of operation as required in this article, except that on
129 Sunday tastings, samples and off-premises sales are unlawful
130 between the hours of 2:00 a. m. and 10:00 a. m. A special
131 license issued other than to a winery or a farm winery may be
132 issued to a "wine club" as defined herein below. The festival
133 or fair committee or the governing body shall designate a
134 person to organize a club under a name which includes the
135 name of the festival or fair and the words "wine club". The
136 license shall be issued in the name of the wine club. A
137 licensee may not commence the sale of wine as provided in
138 this subsection until the wine club has at least fifty dues-
139 paying members who have been enrolled and to whom
140 membership cards have been issued. Thereafter, new
141 members may be enrolled and issued membership cards at
142 any time during the period for which the license is issued. A
143 wine club licensed under the provisions of this subsection
144 may sell wine only to its members, and in portions not to
145 exceed eight ounces per serving. The sales shall take place
146 on premises or in an area cordoned or segregated so as to be
147 closed to the general public, and the general public shall not
148 be admitted to the premises or area. A wine club licensee
149 under the provisions of this subsection shall be authorized to
150 serve complimentary samples of wine in moderate quantities
151 for tasting.

152 A license issued under the provisions of this subsection
153 and the licensee holding the license shall be subject to all
154 other provisions of this article and the rules and orders of the
155 commissioner relating to the special license: *Provided*, That
156 the commissioner may by rule, regulation or order provide for
157 certain waivers or exceptions with respect to the provisions,
158 rules, regulations or orders as the circumstances of each
159 festival or fair may require, including, without limitation, the
160 right to revoke or suspend any license issued pursuant to this
161 section prior to any notice or hearing notwithstanding the
162 provisions of section twenty-seven and twenty-eight of this
163 article: *Provided, however*, That under no circumstances shall

164 the provisions of subsection (c) or (d), section twenty of this
165 article be waived nor shall any exception be granted with
166 respect thereto.

167 A license issued under the provisions of this subsection
168 and the licensee holding the license is not subject to the
169 provisions of subsection (g) of this section.

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

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

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

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

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

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

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

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

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

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

290 (p) The commissioner may issue special one-day licenses
291 to duly organized, nonprofit corporations and associations
292 allowing the sale and serving of wine when raising money for
293 athletic, charitable, educational or religious purposes. The
294 license application shall contain information as the
295 commissioner may reasonably require and shall be submitted
296 to the commissioner at least thirty days prior to the event.
297 Wines used during these events may be donated by or
298 purchased from a licensed retailer, a distributor or a farm
299 winery. Under no circumstances may the provision of

300 subsection (c), section twenty of this article be waived nor
301 may any exception be granted with respect thereto.

- 302 (q) The commissioner may issue special licenses to
303 heritage fairs and festivals allowing the sale, serving and
304 sampling of wine from a licensed farm winery. The license
305 application shall contain information required by the
306 commissioner and shall be submitted to the commissioner at
307 least thirty days prior to the event. Wines used during these
308 events may be donated by or purchased from a licensed farm
309 winery. Under no circumstances may the provision of
310 subsection (c), section twenty of this article be waived nor
311 may any exception be granted with respect thereto. The
312 commissioner shall propose rules for legislative approval in
313 accordance with article three, chapter twenty-nine-a of this
314 code to implement the provisions of this subsection.

315 (r)(1) The commissioner may issue a special license for
316 the retail sale of wine in a college stadium. A license to sell
317 wine granted pursuant to this subsection entitles the licensee
318 to sell and serve wine for consumption in a college stadium.
319 For the purpose of this subsection, "college stadium" means
320 a facility constructed primarily for the use of a Division I
321 college that is a member of the National Collegiate Athletic
322 Association, or its successor, and used as a football,
323 basketball, baseball, soccer or other Division I sports
324 stadium. A special license issued pursuant to this subsection
325 shall be for a term beginning on the date of its issuance and
326 ending on the next following June 30, and its fee is \$250
327 regardless of the length of the term of the license. The
328 application for the special license shall contain information
329 as the commissioner may reasonably require and must be
330 submitted to the commissioner at least thirty days prior to the
331 first day when wine is to be sold. The special license may be
332 issued in the name of the National Collegiate Athletic
333 Association Division I college or university or the name of
334 the primary food and beverage vendor under contract with

335 that college or university. These sales must take place within
336 the confines of the college stadium: *Provided*, That the
337 exterior of the area where wine sales may occur are
338 surrounded by a fence or other barrier prohibiting entry
339 except upon the college or university's express permission,
340 and under the conditions and restrictions established by the
341 college or university, so that the wine sales area is closed to
342 free and unrestricted entry by the general public.

343 (2) A license issued under this subsection and the licensee
344 are subject to the other requirements of this article and the
345 rules and orders of the commissioner relating to the special
346 license: *Provided*, That the commissioner may by rule or
347 order grant certain waivers or exceptions to those rules or
348 orders as the circumstances of each the college stadium may
349 require, including, without limitation, the right to revoke or
350 suspend any license issued pursuant to this section prior to
351 any notice or hearing notwithstanding sections twenty-seven
352 and twenty-eight of this article: *Provided, however*, That
353 subsection (c) or (d), section twenty of this article may not be
354 waived, nor shall any exception be granted concerning those
355 subsections.

356 (3) The commissioner may propose rules for legislative
357 approval in accordance with article three, chapter twenty-
358 nine-a of this code to implement this subsection.

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

[Signature]
.....
Member ~~Chairman~~ Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker of the House of Delegates

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2014 MAR 27 P 4: 21

FILED

The within *is approved* this
the *27th* Day of *March*, 2014.

[Signature]
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 27 2014

Time 3:00 pm