

Senate Bill No. 429

(By Senators Trump, Williams, D. Hall, Stollings, Miller,
Palumbo and Kessler)

[Introduced February 6, 2015; referred to the Committee on
Government Organization; and then to the Committee on Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §11-16-11b; and to
amend and reenact §60-8-3 of said code, all relating to creating
a one-day special license for charitable events to sell
nonintoxicating beer and wine.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §11-16-11b; and that
§60-8-3 of said code be amended and reenacted, all to read as
follows:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-11b. Special license for one-day charitable events; license fee and application; license subject to provisions of article; exceptions.

1 The commissioner may issue a special one-day license to be
2 designated a Class S1 license for the retail sale of
3 nonintoxicating beer to a duly organized nonprofit corporation,
4 limited liability entity or an association having received federal
5 tax exempt status allowing the sale and serving of
6 nonintoxicating beer when raising money for artistic, athletic,
7 charitable, educational or religious purposes. The special
8 license may be issued for a term no longer than one day. The
9 nonrefundable fee is \$25 for the one-day license. The license
10 application shall contain information the commissioner requires
11 and shall be submitted to the commissioner at least fifteen days
12 prior to the event. Nonintoxicating beer used during the event
13 may be donated by or purchased from a licensed retailer,
14 distributor or resident brewer.

15 A license issued under the provisions of this section and the
16 licensee holding the license is subject to all other provisions of
17 this article and the rules and orders of the commissioner relating
18 to the special license: *Provided*, That the commissioner may by
19 rule or order allow waivers or exceptions with respect to those
20 provisions, rules or orders as the circumstances of each event
21 requires, including, without limitation, the right to revoke or
22 suspend any license issued pursuant to this section prior to any
23 notice or hearing notwithstanding the provisions of section
24 twenty-four of this article: *Provided, however*, That under no
25 circumstances may the provisions of subdivision (1), (2) or (3),
26 subsection (a), section eighteen of this article be waived or an
27 exception granted with respect thereto.

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

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
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 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
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 breakfast
43 from which a licensee sells wine shall be separately licensed
44 and there shall be collected with respect to each location the
45 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 a
48 licensee sells wine shall be separately licensed and there shall
49 be collected with respect to each location the annual license
50 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 location the annual license
55 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 for a direct shipper's license who ships and sells
65 wine, nonfortified dessert wine, port, sherry or Madeira 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
73 a lesser 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~~ The 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~~ The club shall
95 meet on the wine specialty shop's premises not more than
96 one time per week and shall either meet at a time when the

97 premises are closed to the general public or shall meet in a
98 separate segregated facility on the premises to which the
99 general public is not admitted. Attendance at tastings shall
100 be limited to duly elected or approved dues-paying members
101 and their 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~~ The special license ~~shall~~ may be
111 issued for ~~a term of~~ no longer than ten consecutive days and
112 the fee therefor ~~shall be~~ is \$250 regardless of the term of the
113 license unless the applicant is the manufacturer of ~~said~~ the
114 wine on a winery or a farm winery as defined in section five-
115 a, article one of this chapter, in which event the fee ~~shall be~~

116 is \$50 if the event is held on the premises of the winery or
117 farm winery. The application for the license shall contain
118 information as the commissioner may reasonably require and
119 shall be submitted to the commissioner at least thirty days
120 prior to the first day when wine is to be sold at the festival or
121 fair. A winery or a farm winery licensed under this
122 subsection may exhibit, conduct tastings or sell samples, not
123 to exceed a reasonable serving of three ounces, and may sell
124 wine 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~~ is authorized
150 to serve complimentary samples of wine in moderate
151 quantities for tasting.

152 A license issued under the provisions of this subsection
153 and the licensee holding the license ~~shall be~~ is 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 may the provisions of subsection (c) or (d), section twenty of
165 this article be waived ~~nor shall~~ or any exception ~~be~~ granted
166 with 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
178 of 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
183 length of the term of the license. The application for the
184 special license shall contain information as the
185 commissioner may reasonably require and must be
186 submitted to the commissioner at least thirty days prior to
187 the first day when wine is to be sold at the professional
188 baseball stadium. The special license may be issued in the
189 name of the baseball franchisee or the name of the primary
190 food and beverage vendor under contract with the baseball
191 franchisee. These sales must take place within the confines

192 of the professional baseball stadium, provided that the
193 exterior of the area where wine sales may occur are
194 surrounded by a fence or other barrier prohibiting entry
195 except upon the franchisee's express permission, and under
196 the conditions and restrictions established by the franchisee
197 so that the wine sales area is closed to free and unrestricted
198 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 professional baseball stadium may require, including,
206 without limitation, the right to revoke or suspend any license
207 issued pursuant to this section prior to any notice or hearing
208 notwithstanding sections twenty-seven and twenty-eight of
209 this article: *Provided, however*, That under no circumstances
210 may subsection (c) or (d), section twenty of this article be

211 waived ~~nor shall any~~ or an exception be granted concerning
212 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 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~~ rules promulgated
232 by the commissioner for the purpose of consumption of ~~said~~
233 the wine off premises: *Provided, however,* That for this
234 article, food or a meal provided by the private licensee
235 means that the total food purchase, excluding beverage
236 purchases, taxes, gratuity or other fees is at least \$15:
237 *Provided further,* That a licensed private wine restaurant or
238 a private club may offer for sale for consumption off the
239 premises sealed bottles of wine to its customers provided
240 that no more than one bottle is sold per each person over
241 twenty-one years of age, as verified by the private wine
242 restaurant or private club, for consumption off the premises.
243 ~~Such~~ The licensees are authorized to keep and maintain on
244 their premises a supply of wine in quantities as may be
245 appropriate for the conduct of operations thereof. Any sale
246 of wine so made ~~shall be~~ is subject to all restrictions set forth
247 in section twenty of this article. A private wine restaurant
248 may also be licensed as a Class A retail dealer in
249 nonintoxicating beer as provided by article sixteen, chapter
250 eleven of this code.

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

258 (l) The commissioner shall ~~promulgate~~ propose
259 legislative rules in accordance with the provisions of chapter
260 twenty-nine-a of this code to allow restaurants to serve wine
261 with meals and to sell wine by the bottle for off-premises
262 consumption as provided in subsection (j) of this section.
263 Each restaurant so licensed shall be charged an additional
264 \$100 per year fee.

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

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

270 (o) A wine specialty shop under this article may also hold
271 a wine sampling license authorizing the wine specialty shop
272 to conduct special wine sampling events at a licensed wine
273 specialty shop location during regular hours of business. The
274 wine specialty shop may serve up to three complimentary
275 samples of wine, consisting of no more than one ounce each,
276 to any one consumer in one day. Persons serving the
277 complimentary samples must be twenty-one years of age and
278 an authorized representative of the licensed wine specialty
279 shop, winery, farm winery or a representative of a distributor
280 or registered supplier. Distributor and supplier
281 representatives attending wine sampling events must be
282 registered with the commissioner. No licensee, employee or
283 representative may furnish, give or serve complimentary
284 samples of wine to any person less than twenty-one years of
285 age or to a person who is physically incapacitated due to the
286 consumption of alcoholic liquor or the use of drugs. The
287 wine specialty shop shall notify and secure permission from
288 the commissioner for all wine sampling events one month

289 prior to the event. Wine sampling events may not exceed six
290 hours per calendar day. Licensees must purchase all wines
291 used during these events from a licensed farm winery or a
292 licensed distributor.

293 (p) The commissioner may issue special one-day
294 licenses to duly organized, nonprofit corporations and
295 associations having received federal tax exempt status
296 allowing the sale and serving of wine when raising money
297 for artistic, athletic, charitable, educational or religious
298 purposes. The nonrefundable fee is \$25 for the one-day
299 license. The license application shall contain information as
300 the commissioner may reasonably require and shall be
301 submitted to the commissioner at least ~~thirty~~ fifteen days
302 prior to the event. Wines used during these events may be
303 donated by or purchased from a licensed retailer, a
304 distributor or a farm winery. Under no circumstances may
305 the provision of subsection (c), section twenty of this article
306 be waived ~~nor~~ or may ~~any~~ an exception be granted with
307 respect thereto.

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

321 (r) (1) The commissioner may issue a special license for the
322 retail sale of wine in a college stadium. A license to sell wine
323 granted pursuant to this subsection entitles the licensee to sell
324 and serve wine for consumption in a college stadium. For the
325 purpose of this subsection, “college stadium” means a facility
326 constructed primarily for the use of a Division I college that is

327 a member of the National Collegiate Athletic Association, or its
328 successor, and used as a football, basketball, baseball, soccer or
329 other Division I sports stadium. A special license issued
330 pursuant to this subsection shall be for a term beginning on the
331 date of its issuance and ending on the next following June 30
332 and its fee is \$250 regardless of the length of the term of the
333 license. The application for the special license shall contain
334 information as the commissioner may reasonably require and
335 must be submitted to the commissioner at least thirty days prior
336 to the first day when wine is to be sold. The special license
337 may be issued in the name of the National Collegiate Athletic
338 Association Division I college or university or the name of the
339 primary food and beverage vendor under contract with that
340 college or university. These sales must take place within the
341 confines of the college stadium: *Provided*, That the exterior of
342 the area where wine sales may occur are surrounded by a fence
343 or other barrier prohibiting entry except upon the college or
344 university's express permission, and under the conditions and
345 restrictions established by the college or university, so that the

346 wine sales area is closed to free and unrestricted entry by the
347 general public.

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

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

(NOTE: The purpose of this bill is to create a new code section for a one-day special license for charitable events only to sell nonintoxicating beer similar to a wine provision in W. Va. Code §60-8-3 with a small prorated \$25 fee (as compared to the ten-day license at \$250) to cover the costs of licensing and inspection. The bill would also add the \$25 fee to the charitable wine license already in W. Va. Code §60-8-3. The West Virginia Alcohol Beverage Control Administration annually receives numerous requests for these licenses from charitable organizations and grants them for wine but there is no such license for nonintoxicating beer.

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