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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2014

—●—  
**ENROLLED**

**House Bill No. 4529**

(By Delegates Manchin, Ferro, Lawrence,  
Pethtel, Boggs and Skaff)

—●—  
Passed March 7, 2014

In effect ninety days from passage.

HB 4529

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H. B. 4529

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(BY DELEGATES MANCHIN, FERRO, LAWRENCE,  
PETHTEL, BOGGS AND SKAFF)

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AN ACT to amend and reenact §60-8-2 and §60-8-16 of the Code of West Virginia, 1931, as amended, all relating to the sale of wine generally; expanding the definition of “person” for purposes of holding a distributor license; allowing trusts, limited liability companies and associations to hold a distributor’s license; and requiring certain disclosures by applicants that are trusts, limited liability companies or associations.

*Be it enacted by the Legislature of West Virginia:*

That §60-8-2 and §60-8-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to all read as follows:

**ARTICLE 8. SALE OF WINES.**

**PART II. SALE OF WINE GENERALLY.**

**§60-8-2. Definitions.**

1 Unless the context in which used clearly requires a different  
2 meaning, as used in this article:

3 “Commissioner” or “commission” means the West Virginia  
4 Alcohol Beverage Control Commissioner.

5 "Distributor" means any person whose principal place of  
6 business is within the State of West Virginia who makes  
7 purchases from a supplier to sell or distribute wine to retailers,  
8 grocery stores, private wine bed and breakfasts, private wine  
9 restaurants, private wine spas, private clubs or wine specialty  
10 shops and that sells or distributes nonfortified dessert wine, port,  
11 sherry and Madeira wines to wine specialty shops, private wine  
12 restaurants, private clubs or retailers under authority of this  
13 article and maintains a warehouse in this state for the distribution  
14 of wine. For the purpose of a distributor only, the term "person"  
15 means and includes an individual, firm, trust, partnership,  
16 limited partnership, limited liability company, association or  
17 corporation. Any trust licensed as a distributor or any trust that  
18 is an owner of a distributor licensee, and the trustee or other  
19 persons in active control of the activities of the trust relating to  
20 the distributor license, is liable for acts of the trust or its  
21 beneficiaries relating to the distributor license that are unlawful  
22 acts or violations of this article, notwithstanding the liability of  
23 trustees in article ten, chapter forty-four-d of this code.

24 "Fortified wine" means any wine to which brandy or other  
25 alcohol has been added and shall include dessert wines which are  
26 not fortified having an alcohol content by volume of at least  
27 fourteen and one-tenths percent and not exceeding sixteen  
28 percent.

29 "Grocery store" means any retail establishment, commonly  
30 known as a grocery store, supermarket, delicatessen, caterer or  
31 party supply store, where food, food products and supplies for  
32 the table are sold for consumption off the premises with average  
33 monthly sales (exclusive of sales of wine) of not less than \$500  
34 and an average monthly inventory (exclusive of inventory of  
35 wine) of not less than \$3,000. The term "grocery store" shall also  
36 include and mean a separate and segregated portion of any other  
37 retail store which is dedicated solely to the sale of food, food  
38 products and supplies for the table for consumption off the  
39 premises with average monthly sales with respect to such  
40 separate or segregated portion (exclusive of sales of wine) of not  
41 less than \$3,000 and an average monthly inventory (exclusive of  
42 inventory of wine) of not less than \$3,000.

43 "Licensee" means the holder of a license granted under the  
44 provisions of this article.

45 “Person” means and includes an individual, firm,  
46 partnership, limited partnership, limited liability company,  
47 association or corporation.

48 “Private wine bed and breakfast” means any business with  
49 the sole purpose of providing, in a residential or country setting,  
50 a hotel, motel, inn or other such establishment properly zoned as  
51 to its municipality or local ordinances, lodging and meals to its  
52 customers in the course of their stay at the establishment, which  
53 business also: (1) Is a partnership, limited partnership,  
54 corporation, unincorporated association or other business entity  
55 which as part of its general business purpose provides meals on  
56 its premises to its members and their guests; (2) is licensed under  
57 the provisions of this article as to all of its premises or as to a  
58 separate segregated portion of its premises to serve wine to its  
59 members and their guests when such sale accompanies the  
60 serving of food or meals; and (3) admits only duly elected and  
61 approved dues-paying members and their guests while in the  
62 company of a member and does not admit the general public.

63 “Private wine restaurant” means a restaurant which: (1) Is a  
64 partnership, limited partnership, corporation, unincorporated  
65 association or other business entity which has as its principal  
66 purpose the business of serving meals on its premises to its  
67 members and their guests; (2) is licensed under the provisions of  
68 this article as to all of its premises or as to a separate segregated  
69 portion of its premises to serve wine to its members and their  
70 guests when such sale accompanies the serving of food or meals;  
71 (3) admits only duly elected and approved dues-paying members  
72 and their guests while in the company of a member and does not  
73 admit the general public. Such private clubs that meet the private  
74 wine restaurant requirements numbered (1), (2) and (3) in this  
75 definition shall be considered private wine restaurants.

76 “Private wine spa” means any business with the sole purpose  
77 of providing commercial facilities devoted especially to health,  
78 fitness, weight loss, beauty, therapeutic services and relaxation,  
79 and may be also a licensed massage parlor or a salon with  
80 licensed beauticians or stylists, which business also: (1) Is a  
81 partnership, limited partnership, corporation, unincorporated  
82 association or other business entity which as part of its general  
83 business purpose provides meals on its premises to its members  
84 and their guests; (2) is licensed under the provisions of this

85 article as to all of its premises or as to a separate segregated  
86 portion of its premises to serve up to two glasses of wine to its  
87 members and their guests when such sale accompanies the  
88 serving of food or meals; and (3) admits only duly elected and  
89 approved dues-paying members and their guests while in the  
90 company of a member, and does not admit the general public.

91 “Retailer” means any person licensed to sell wine at retail to  
92 the public at his or her established place of business for  
93 off-premises consumption and who is licensed to do so under  
94 authority of this article.

95 “Supplier” means any manufacturer, producer, processor,  
96 winery, farm winery, national distributor or other supplier of  
97 wine who sells or offers to sell or solicits or negotiates the sale  
98 of wine to any licensed West Virginia distributor.

99 “Tax” includes within its meaning interest, additions to tax  
100 and penalties.

101 “Taxpayer” means any person liable for any tax, interest,  
102 additions to tax or penalty under the provisions of this article and  
103 any person claiming a refund of tax.

104 “Varietal wine” means any wine labeled according to the  
105 grape variety from which such wine is made.

106 “Vintage wine” or “vintage-dated wine” means wines from  
107 which the grapes used to produce such wine are harvested during  
108 a particular year or wines produced from the grapes of a  
109 particular harvest in a particular region of production.

110 “Wine” means any alcoholic beverage obtained by the  
111 natural fermentation of the natural content of grapes, other fruits  
112 or honey or other agricultural products containing sugar and to  
113 which no alcohol has been added and shall include table wine,  
114 and shall exclude fortified wine and shall also exclude any  
115 product defined as or embraced within the definition of  
116 nonintoxicating beer under the provisions of article sixteen,  
117 chapter eleven of this code.

118 “Wine specialty shop” means a retailer who shall deal  
119 principally in the sale of table wine, nonfortified dessert wines,  
120 wine accessories and food or foodstuffs normally associated with

121 wine and: (1) Who shall maintain a representative number of  
122 such wines for sale in his or her inventory which are designated  
123 by label as varietal wine, vintage, generic and/or according to  
124 region of production and the inventory shall contain not less than  
125 fifteen percent vintage or vintage-dated wine by actual bottle  
126 count; and (2) who, any other provisions of this code to the  
127 contrary notwithstanding, may maintain an inventory of port,  
128 sherry and Madeira wines having an alcoholic content of not  
129 more than twenty-two percent alcohol by volume and which  
130 have been matured in wooden barrels or casks.

**§60-8-16. Application for license.**

1 (a) Any person desiring a license under this article shall file  
2 a written application for a license with the commissioner and in  
3 the application shall state under oath:

4 (1) The name of the applicant, including his or her trade  
5 name if any, his or her address and the length of his or her  
6 residence within this state;

7 (2) The address of the place of business for which the license  
8 is desired, or other description that definitely locates it; and that  
9 the place of business conforms to all health and fire laws and  
10 regulations applicable thereto;

11 (3) The name of the owner of the premises upon which the  
12 business is to be conducted and, if the owner is not the applicant,  
13 that such applicant is the bona fide lessee of the business;

14 (4) If the application is for a retailer's license, that the  
15 applicant is the proprietor or owner of a bona fide grocery store,  
16 private wine bed and breakfast, private wine restaurant, private  
17 wine spa or wine specialty shop;

18 (5) That the applicant intends to carry on the business  
19 authorized by the license for himself or herself or under his or  
20 her immediate supervision or direction;

21 (6) That the applicant is a citizen of the United States;

22 (7) That the applicant is an actual bona fide resident of the  
23 State of West Virginia, except for those applicants applying for  
24 a supplier's license or a direct shipper's license;

25           (8) That the applicant is not less than eighteen years of age;

26           (9) That the applicant has not been convicted of a felony or  
27 other crime involving moral turpitude within the three years next  
28 preceding the filing of the application; and that he or she has not,  
29 within the two years next preceding the filing of the application,  
30 been convicted of violating the liquor laws of any state or of the  
31 United States;

32           (10) That the applicant has not during the five years next  
33 preceding the date of said application had any license revoked  
34 under this chapter or under the liquor laws of any other state;

35           (11) If the applicant is a firm, association, partnership,  
36 limited partnership, limited liability company or corporation, the  
37 application shall state the matters required in subdivisions (6),  
38 (7), (8), (9) and (10), with respect to each of the members  
39 thereof, and each of said members must meet all the  
40 requirements in said subdivisions;

41           (12) If the applicant is a corporation, organized or authorized  
42 to do business in this state, the application shall state the matters  
43 required in subdivisions (6), (7), (8), (9) and (10), with respect  
44 to each of the officers and directors thereof, and any stockholder  
45 owning twenty percent or more of the stock of such corporation  
46 and the persons who conduct and manage the licensed premises  
47 for the corporation. Each of said individuals must meet all the  
48 requirements provided in those subdivisions except that the  
49 requirements as to citizenship and residence shall not apply to  
50 the officers, directors and stockholders of a corporation applying  
51 for a retailer's license; and

52           (13) If the applicant is a trust or has a trust as an owner, the  
53 trustees or other persons in active control of the activities of the  
54 trust relating to the license shall provide a certification of trust  
55 as described in section one thousand thirteen, article ten, chapter  
56 forty-four-d of this code. This certification of trust shall include  
57 the excerpts described in subsection (e), section one thousand  
58 thirteen, article ten, chapter forty-four-d of this code and shall  
59 further state, under oath, the names, addresses, Social Security  
60 numbers and birth dates of the beneficiaries of the trust and  
61 certify that the trustee and beneficiaries are twenty-one years of  
62 age or older. If a beneficiary is not twenty-one years of age, the

63 certification of trust must state that the beneficiary's interest in  
64 the trust is represented by a trustee, parent or legal guardian who  
65 is twenty-one years of age and who will direct all actions on  
66 behalf of the beneficiary related to the trust with respect to the  
67 distributor until the beneficiary is twenty-one years of age. Any  
68 beneficiary who is not twenty-one years of age or older shall  
69 have his or her trustee, parent or legal guardian include in the  
70 certification of trust and state under oath his or her name,  
71 address, social security number and birth date.

72 (14) Any other information that the commissioner may  
73 reasonably require.

74 The foregoing statements required in an application are  
75 mandatory prerequisites for the issuance of a license.

76 The application must be verified by the owner, or in the case  
77 of a firm, partnership, limited partnership, limited liability  
78 company, association or trust, the members, officers, trustees or  
79 other persons in active control of the activities of the limited  
80 liability company, association or trust relating to the license. The  
81 application of a corporation applying for a retailer's license need  
82 be verified only by its president or vice president.

83 (b) In the case of an applicant that is a trust or has a trust as  
84 an owner, a distributor license may be issued only upon  
85 submission by the trustees or other persons in active control of  
86 the activities of the trust relating to the distributor license of a  
87 true and correct copy of the written trust instrument to the  
88 commissioner for his or her review. Notwithstanding any  
89 provision of law to the contrary, the copy of the written trust  
90 instrument submitted to the commissioner pursuant to this  
91 section is confidential and is not a public record and is not  
92 available for release pursuant to the West Virginia Freedom of  
93 Information Act codified in article one, chapter twenty-nine-b of  
94 this code.



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

Jeremy Wells  
Chairman, House Committee

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

Originating in the House.

In effect ninety days from passage.

Bryon H. Seal  
Clerk of the House of Delegates

Joseph McMinard  
Clerk of the Senate

[Signature]  
Speaker of the House of Delegates

[Signature]  
President of the Senate

The within is approved this the 28th  
day of March, 2014.

Carl Roy Tomblin  
Governor

PRESENTED TO THE GOVERNOR

MAR 28 2011

Time 10:45 pm