WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

ENROLLED

SENATE BILL NO. 302

(By Senator [Signature])

PASSED April 5, 1989
In Effect from Passage
ENROLLED
Senate Bill No. 302
(By Senators Brackenrich, Parker and Felton)

[Passed April 5, 1989; in effect from passage.]

AN ACT to amend and reenact section seven, article twenty-two, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five-a, article one; section two, article six; and section three, article eight, chapter sixty of said code, all relating to the permission of advertising of farm wineries; revising the definition of "farm winery" as inclusive of operating an offsite establishment and as exclusive of young implantations; providing permission for the holder of a farm winery license to sell wine to consumers at the winery and to other sellers without payment of a transport bond relating to the permission and the regulation of the sale of West Virginia wine at fairs, festivals, restaurants and state stores; and providing for legislative rules.

Be it enacted by the Legislature of West Virginia:

That section seven, article twenty-two, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five-a, article one; section two, article six; and section three, article eight, chapter sixty of said code be amended and reenacted, all to read as follows:
CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 22. OUTDOOR ADVERTISING.

§17-22-7. Exceptions to prohibited signs; standards for excepted signs.

1 The provisions of section three of this article shall not apply to the following: (a) Directional and other official signs and notices required or authorized by law, including but not limited to signs and notices pertaining to natural wonders, farm wineries, scenic and historical attractions, which such signs and notices shall conform to standards respecting lighting, size, number, spacing and such other appropriate requirements as may be designated and specified by the secretary of transportation of the United States: Provided, That the state road commissioner shall not establish any standards respecting lighting, size, number, spacing and other appropriate requirements which are stricter than such standards designated and specified by the secretary of transportation of the United States; (b) signs, displays, and devices advertising the sale or lease of property upon which they are located; and (c) signs, displays, and devices advertising activities conducted on the property on which they are located, including markers of underground utility facilities.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5a. Farm wineries defined.

1 For the purpose of this chapter: "Farm winery" means an establishment where in any year fifty thousand gallons or less of wine is manufactured exclusively by natural fermentation from grapes, other fruit or honey, with twenty-five percent of such raw products being produced by the owner of such farm winery on the premises of that establishment, and no more than twenty-five percent of such produce originating from any source outside this state: Provided, That a farm winery may include one off-farm
location: Provided, however, That the owner of a farm
winery may provide to the commissioner evidence,
accompanied by written findings by the West Virginia
agriculture commissioner in support thereof, that the
owner has planted on the premises of the farm winery
young non-bearing fruit plants. The commissioner
may grant permission for one off-farm location in an
amount equal to that reasonably expected to be
produced when the non-bearing fruit plants planted
on the farm winery come into full production. The
length of time of the permission to use an off-farm
location shall be determined by the commissioner
after consultation with the agriculture commissioner.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-2. When lawful to manufacture and sell wine and
cider.

1. The provisions of this chapter shall not prevent:

2. (1) A person from manufacturing wine at his resi-
dence for consumption at his residence as permitted
by section one of this article;

3. (2) A person from manufacturing and selling
unfermented cider;

4. (3) A person from manufacturing and selling cider
made from apples produced by him within this state,
to persons holding distillery licenses, but such manu-
ufacture and sale shall be under the supervision and
regulation of the commissioner;

5. (4) A person from manufacturing and selling wine
made from fruit produced by him within this state to
persons holding winery licenses, but such manufacture
and sale shall be under the supervision and regulation
of the commissioner; and

6. (5) The holder of a farm winery license from selling
wine produced by it directly to consumers at the
winery and at one off-farm winery location or to any
other person who is licensed under this chapter to sell
wine either at wholesale or at retail: Provided, That
the winery may ship wines from the farm winery
without the bonding requirements of a transporter: 
Provided, however, That notwithstanding any other 
provisions of law to the contrary, an individual or 
licensee in a state which affords the wineries of this 
state equal reciprocal shipping privileges, may ship for 
personal use and not for resale, not more than two 
cases of wine per month to any adult resident in this 
state.

ARTICLE 8. SALE OF WINES.

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

(a) Except as to farm wineries as defined by section 
five-a, article one of this chapter, no person may 
engage in business in the capacity of a distributor, 
retailer or private wine restaurant without first 
attaining a license from the commissioner, nor shall a 
person continue to engage in any such activity after 
his license has expired, been suspended or revoked. No 
person may be licensed simultaneously as a distributor 
and a retailer, as a distributor and a private wine 
restaurant, or as a retailer and a private wine 
restaurant.

(b) The commissioner shall collect an annual fee for 
licenses issued under this article, as follows:

(1) Twenty-five hundred dollars per year for a 
distributor’s license and each separate warehouse or 
other facility from which a distributor sells, transfers 
or delivers wine shall be separately licensed and there 
shall be collected with respect to each such location 
the annual license fee of twenty-five hundred dollars 
as herein provided.

(2) One hundred fifty dollars per year for a retailer’s 
license.

(3) Fifty dollars per year for a wine tasting license.

(4) Fifty dollars for each sales representative of or 
employed by a licensed distributor.

(5) Two hundred fifty dollars per year for a private 
wine restaurant license, and each separate restaurant 
from which a licensee sells wine shall be separately
licensed and there shall be collected with respect to each such location the annual license fee of two hundred fifty dollars as herein provided.

(c) The license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following year, and if granted for a less period, the same shall be computed semiannually in proportion to the remainder of the fiscal year.

(d) No retailer may be licensed as a private club as provided by article seven of this chapter.

(e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of this code: Provided, That a delicatessen which is a grocery store as defined in section two of this article and which is licensed as a Class A retail dealer in nonintoxicating beer, may be a retailer under this article: Provided, however, That any delicatessen licensed in both such capacities must maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.

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

(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.
(h) The commissioner may issue a special license for the retail sale of wine at any festival or fair which is endorsed or sponsored by the governing body of a municipality or a county commission. Such special license shall be issued for a term of no longer than ten consecutive days and the fee therefore shall be two hundred fifty dollars regardless of the term of the license unless the applicant is the manufacturer of said wine on a farm winery as defined in section five-a, article one of this chapter, in which event the fee shall be twenty-five dollars. The application for such license shall contain such information as the commissioner may reasonably require and shall be submitted to the commissioner at least thirty days prior to the first day when wine is to be sold at such festival or fair. A farm winery licensed under this subsection may exhibit, conduct tastings, not to exceed a reasonable serving, and may sell wine only for consumption off the premises of such festival or fair. A special license issued other than to a farm winery may be issued to a “wine club” as defined hereinbelow. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the festival or fair and the words “wine club.” The license shall be issued in the name of the wine club. A licensee may not commence the sale of wine as provided for in this subsection until the wine club has at least fifty dues paying members who have been enrolled and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this subsection may sell wine only to its members, and in portions not to exceed eight ounces per serving. Such sales shall take place on premises or in an area cordoned or segregated so as to be closed to the general public, and the general public shall not be admitted to such premises or area. A wine club licensee under the provisions of this subsection shall be authorized to serve complimentary samples of wine in moderate quantities for tasting.
A license issued under the provisions of this subsection and the licensee holding such license shall be subject to all other provisions of this article and the rules, regulations and orders of the commissioner relating to such special license: Provided, That the commissioner may by rule, regulation, or order provide for certain waivers or exceptions with respect to such provisions, rules, regulations, or order as the circumstances of each such festival or fair may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions of section twelve of this article: Provided however, That under no circumstances shall the provisions of subsections (c) or (d), section twenty of this article be waived nor shall any exception be granted with respect thereto.

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

(i) A license to sell wine granted to a private wine restaurant under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when such sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article. Such licensees are authorized to keep and maintain on their premises a supply of wine in such quantities as may be appropriate for the conduct of operations thereof. Any sale of wine so made shall be subject to all restrictions set forth in section twenty of this article. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of this code.

(j) With respect to subdivisions (h) and (i) of this section, the commissioner shall promulgate rules and regulations in regard to the form of the applications, the suitability of both the applicant and location of the licensed premises and such other rules and regulations
deemed necessary to carry the provisions of such subsections into effect.

(k) The commissioner shall promulgate rules and regulations in accordance with chapter twenty-nine-a to allow restaurants to serve West Virginia wine with meals, but not to sell the wine by the bottle. Each restaurant so licensed shall be charged a fee less than that charged for a wine license to a retail outlet, such fees to be set forth in the aforementioned rules and regulations promulgated pursuant to this subsection.

(l) The commissioner shall establish guidelines to permit West Virginia wines to be sold in state stores.

(m) Farm wineries as defined in section one-a of this article may advertise off premises as provided in section seven, article twenty-two, chapter seventeen of this chapter and in any other media, including, but not limited to, newspaper, radio, television, magazines and direct mail solicitation.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Parker  
Chairman Senate Committee

Bernard V. Kelly  
Chairman House Committee

Originated in the Senate.

In effect from passage.

Fred C. Shultz  
Clerk of the Senate

W. S. Hoge  
Clerk of the House of Delegates

Landis C. Jones  
President of the Senate

J. E. Miller  
Speaker House of Delegates

The within ... approved ... this the 16th ...  

day of April 1989.  

Gaston Caperton  
Governor