

No. 302

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

ENROLLED

SENATE BILL NO. 302

(By Senator Brackinrich, et al)

PASSED April 5, 1989

In Effect from Passage

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LETTER OF THE SECRETARY OF STATE

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
2 not apply to the following: (a) Directional and other
3 official signs and notices required or authorized by
4 law, including but not limited to signs and notices
5 pertaining to natural wonders, farm wineries, scenic
6 and historical attractions, which such signs and notices
7 shall conform to standards respecting lighting, size,
8 number, spacing and such other appropriate
9 requirements as may be designated and specified by
10 the secretary of transportation of the United States:
11 *Provided*, That the state road commissioner shall not
12 establish any standards respecting lighting, size,
13 number, spacing and other appropriate requirements
14 which are stricter than such standards designated and
15 specified by the secretary of transportation of the
16 United States; (b) signs, displays, and devices
17 advertising the sale or lease of property upon which
18 they are located; and (c) signs, displays, and devices
19 advertising activities conducted on the property on
20 which they are located, including markers of under-
21 ground 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"
2 means an establishment where in any year fifty
3 thousand gallons or less of wine is manufactured
4 exclusively by natural fermentation from grapes,
5 other fruit or honey, with twenty-five percent of such
6 raw products being produced by the owner of such
7 farm winery on the premises of that establishment,
8 and no more than twenty-five percent of such produce
9 originating from any source outside this state: *Pro-*
10 *vided*, That a farm winery may include one off-farm

11 location: *Provided, however,* That the owner of a farm
12 winery may provide to the commissioner evidence,
13 accompanied by written findings by the West Virginia
14 agriculture commissioner in support thereof, that the
15 owner has planted on the premises of the farm winery
16 young non-bearing fruit plants. The commissioner
17 may grant permission for one off-farm location in an
18 amount equal to that reasonably expected to be
19 produced when the non-bearing fruit plants planted
20 on the farm winery come into full production. The
21 length of time of the permission to use an off-farm
22 location shall be determined by the commissioner
23 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-
3 dence for consumption at his residence as permitted
4 by section one of this article;

5 (2) A person from manufacturing and selling
6 unfermented cider;

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

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

17 (5) The holder of a farm winery license from selling
18 wine produced by it directly to consumers at the
19 winery and at one off-farm winery location or to any
20 other person who is licensed under this chapter to sell
21 wine either at wholesale or at retail: *Provided,* That
22 the winery may ship wines from the farm winery

23 without the bonding requirements of a transporter:
24 *Provided, however,* That notwithstanding any other
25 provisions of law to the contrary, an individual or
26 licensee in a state which affords the wineries of this
27 state equal reciprocal shipping privileges, may ship for
28 personal use and not for resale, not more than two
29 cases of wine per month to any adult resident in this
30 state.

ARTICLE 8. SALE OF WINES.

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

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

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

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

21 (2) One hundred fifty dollars per year for a retailer's
22 license.

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

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

26 (5) Two hundred fifty dollars per year for a private
27 wine restaurant license, and each separate restaurant
28 from which a licensee sells wine shall be separately

29 licensed and there shall be collected with respect to
30 each such location the annual license fee of two
31 hundred fifty dollars as herein provided.

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

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

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

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

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

69 (h) The commissioner may issue a special license for
70 the retail sale of wine at any festival or fair which is
71 endorsed or sponsored by the governing body of a
72 municipality or a county commission. Such special
73 license shall be issued for a term of no longer than ten
74 consecutive days and the fee therefore shall be two
75 hundred fifty dollars regardless of the term of the
76 license unless the applicant is the manufacturer of said
77 wine on a farm winery as defined in section five-a,
78 article one of this chapter, in which event the fee shall
79 be twenty-five dollars. The application for such license
80 shall contain such information as the commissioner
81 may reasonably require and shall be submitted to the
82 commissioner at least thirty days prior to the first day
83 when wine is to be sold at such festival or fair. A farm
84 winery licensed under this subsection may exhibit,
85 conduct tastings, not to exceed a reasonable serving,
86 and may sell wine only for consumption off the
87 premises of such festival or fair. A special license
88 issued other than to a farm winery may be issued to
89 a "wine club" as defined hereinbelow. The festival or
90 fair committee or the governing body shall designate
91 a person to organize a club under a name which
92 includes the name of the festival or fair and the words
93 "wine club." The license shall be issued in the name
94 of the wine club. A licensee may not commence the
95 sale of wine as provided for in this subsection until the
96 wine club has at least fifty dues paying members who
97 have been enrolled and to whom membership cards
98 have been issued. Thereafter, new members may be
99 enrolled and issued membership cards at any time
100 during the period for which the license is issued. A
101 wine club licensed under the provisions of this
102 subsection may sell wine only to its members, and in
103 portions not to exceed eight ounces per serving. Such
104 sales shall take place on premises or in an area
105 cordoned or segregated so as to be closed to the
106 general public, and the general public shall not be
107 admitted to such premises or area. A wine club
108 licensee under the provisions of this subsection shall
109 be authorized to serve complimentary samples of wine
110 in moderate quantities for tasting.

111 A license issued under the provisions of this
112 subsection and the licensee holding such license shall
113 be subject to all other provisions of this article and the
114 rules, regulations and orders of the commissioner
115 relating to such special license: *Provided*, That the
116 commissioner may by rule, regulation, or order
117 provide for certain waivers or exceptions with respect
118 to such provisions, rules, regulations, or order as the
119 circumstances of each such festival or fair may
120 require, including, without limitation, the right to
121 revoke or suspend any license issued pursuant to this
122 section prior to any notice or hearing notwithstanding
123 the provisions of section twelve of this article: *Pro-*
124 *vided, however*, That under no circumstances shall the
125 provisions of subsections (c) or (d), section twenty of
126 this article be waived nor shall any exception be
127 granted with respect thereto.

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

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

147 (j) With respect to subdivisions (h) and (i) of this
148 section, the commissioner shall promulgate rules and
149 regulations in regard to the form of the applications,
150 the suitability of both the applicant and location of the
151 licensed premises and such other rules and regulations

152 deemed necessary to carry the provisions of such
153 subsections into effect.

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

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

See Code
164 (m) Farm wineries as defined in section one-a of this
165 article may advertise off premises as provided in
166 section seven, article twenty-two, chapter seventeen of
167 this ~~chapter~~ and in any other media, including, but not
168 limited to, newspaper, radio, television, magazines and
169 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.

Jouel C. Stuck
.....
Clerk of the Senate

Donald J. Hogg
.....
Clerk of the House of Delegates

Leon Turner
.....
President of the Senate
Robert R. Rosten
.....
Speaker House of Delegates

The within *is approved* this the *12th*
day of *April* 1989.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/7/89

Time 5:14