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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1991



ENROLLED

SENATE BILL NO. 89

(By Senator Nause, et al)



PASSED February 25, 1991
In Effect July 1, 1991 ~~Passage~~

ENROLLED

Senate Bill No. 89

(BY SENATORS HAWSE, BLATNIK, ANDERSON AND MINARD)

[Passed February 25, 1991; to take effect July 1, 1991.]

AN ACT to amend and reenact section three, article eight, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licenses; fees; general restrictions; and creating a West Virginia wine retailers license.

Be it enacted by the Legislature of West Virginia:

That section three, article eight, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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 (6) Twenty-five dollars per year for a West Virginia
33 wine retailers license, and each separate retail outlet
34 from which a West Virginia wine retailer sells West
35 Virginia wine shall be separately licensed and there
36 shall be collected with respect to each such location
37 the annual license fee of twenty-five dollars as herein
38 provided. The holder of such a license may sell no
39 wines except those produced by West Virginia farm
40 wineries as defined by section five-a, article one of this
41 chapter. Except for the amount of the license fee and
42 the restriction to sales of West Virginia wines, a West
43 Virginia wine retailer is subject to all other provisions
44 of this article which are applicable to a retailer as
45 defined in section two of this article.

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

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

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

64 (f) A retailer under this article may also hold a wine
65 tasting license authorizing such retailer to serve
66 complimentary samples of wine in moderate quanti-
67 ties for tasting. Such retailer shall organize a winetas-
68 ter's club, which has at least fifty duly elected or
69 approved dues paying members in good standing. Such
70 club shall meet on the retailer's premises not more
71 than one time per week and shall either meet at a
72 time when the premises are closed to the general
73 public, or shall meet in a separate segregated facility
74 on the premises to which the general public is not
75 admitted. Attendance at tastings shall be limited to
76 duly elected or approved dues paying members and
77 their guests.

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

83 (h) The commissioner may issue a special license for
84 the retail sale of wine at any festival or fair which is
85 endorsed or sponsored by the governing body of a
86 municipality or a county commission. Such special
87 license shall be issued for a term of no longer than ten
88 consecutive days and the fee therefor shall be two
89 hundred fifty dollars regardless of the term of the
90 license unless the applicant is the manufacturer of said

91 wine on a farm winery as defined in section five-a,
92 article one of this chapter, in which event the fee shall
93 be twenty-five dollars. The application for such license
94 shall contain such information as the commissioner
95 may reasonably require and shall be submitted to the
96 commissioner at least thirty days prior to the first day
97 when wine is to be sold at such festival or fair. A farm
98 winery licensed under this subsection may exhibit,
99 conduct tastings, not to exceed a reasonable serving,
100 and may sell wine only for consumption off the
101 premises of such festival or fair. A special license
102 issued other than to a farm winery may be issued to
103 a "wine club" as defined hereinbelow. The festival or
104 fair committee or the governing body shall designate
105 a person to organize a club under a name which
106 includes the name of the festival or fair and the words
107 "wine club". The license shall be issued in the name
108 of the wine club. A licensee may not commence the
109 sale of wine as provided for in this subsection until the
110 wine club has at least fifty dues paying members who
111 have been enrolled and to whom membership cards
112 have been issued. Thereafter, new members may be
113 enrolled and issued membership cards at any time
114 during the period for which the license is issued. A
115 wine club licensed under the provisions of this subsec-
116 tion may sell wine only to its members, and in
117 portions not to exceed eight ounces per serving. Such
118 sales shall take place on premises or in an area
119 cordoned or segregated so as to be closed to the
120 general public, and the general public shall not be
121 admitted to such premises or area. A wine club
122 licensee under the provisions of this subsection shall
123 be authorized to serve complimentary samples of wine
124 in moderate quantities for tasting.

125 A license issued under the provisions of this subsec-
126 tion and the licensee holding such license shall be
127 subject to all other provisions of this article and the
128 rules, regulations and orders of the commissioner
129 relating to such special license: *Provided*, That the
130 commissioner may by rule, regulation, or order
131 provide for certain waivers or exceptions with respect
132 to such provisions, rules, regulations, or orders as the

133 circumstances of each such festival or fair may
134 require, including, without limitation, the right to
135 revoke or suspend any license issued pursuant to this
136 section prior to any notice or hearing notwithstanding
137 the provisions of section twelve of this article: *Pro-*
138 *vided, however,* That under no circumstances shall the
139 provisions of subsection (c) or (d), section twenty of
140 this article be waived nor shall any exception be
141 granted with respect thereto.

142 A license issued under the provisions of this subsec-
143 tion and the licensee holding such license shall not be
144 subject to the provisions of subsection (g) of this
145 section.

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

161 (j) With respect to subsections (h) and (i) of this
162 section, the commissioner shall promulgate legislative
163 rules in accordance with the provisions of chapter
164 twenty-nine-a of this code with regard to the form of
165 the applications, the suitability of both the applicant
166 and location of the licensed premises and such other
167 legislative rules deemed necessary to carry the provi-
168 sions of such subsections into effect.

169 (k) The commissioner shall promulgate legislative
170 rules in accordance with the provisions of chapter
171 twenty-nine-a of this code to allow restaurants to
172 serve West Virginia wine with meals, but not to sell

173 the wine by the bottle. Each restaurant so licensed
174 shall be charged a fee less than that charged for a
175 wine license to a retail outlet, such fees to be set forth
176 in the aforementioned rules promulgated pursuant to
177 this subsection.

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

180 (m) Farm wineries as defined in section one-a of this
181 article may advertise off premises as provided in
182 section seven, article twenty-two of chapter seventeen
183 and in any other media, including, but not limited to,
184 newspaper, radio, television, magazines and direct
185 mail solicitation.

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

Homer Heck
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1991.

Harold E. Palmer
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Reed Smoot
.....
President of the Senate

W. A. ...
.....
Speaker House of Delegates

The within *is* approved this the *5th* day of *March*, 1991.

Gaston Caperton
.....
Governor

PRESENTED TO

GOVERNOR

Date 2/27/91

Time 1:45 pm