WEST VIRGINIA LEGISLATURE

Regular Session, 2003

ENROLLED

SENATE BILL NO. 112

(By Senator Sharpe, et al)

PASSED March 6, 2003

In Effect from Passage
AN ACT to amend and reenact section five-a, article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article six of said chapter; and to amend and reenact section two, article eight of said chapter, all relating generally to beverages containing alcohol; allowing farm wineries to produce wine from other agricultural products containing sugar; allowing farm wineries to manufacture, serve and sell dessert, port, sherry and Madeira wines; and excluding dessert wine produced by farm wineries from the definition of fortified wine.

Be it enacted by the Legislature of West Virginia:

That section five-a, article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article six of said chapter be amended and reenacted; and that section two,
article eight of said chapter be amended and reenacted, all to read as follows:

ARTICLE I. GENERAL PROVISIONS.

§60-1-5a. Farm wineries defined.

(a) 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 fruits or honey or other agricultural products containing sugar, 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.

(b) Notwithstanding the provisions of subsection (a) of this section, a farm winery may include one off-farm location. 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 nonbearing 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 nonbearing 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.

(c) For purposes of this definition and when used in this chapter to refer to the product of a farm winery or the product of the holder of a farm winery license, "wine" includes dessert wines manufactured exclusively by natural fermentation and port, sherry and Madeira wines having an alcoholic content of not more than twenty-two percent alcohol by volume and which have been matured in wooden barrels or casks.
ARTICLE 6. MISCELLANEOUS PROVISIONS.

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

The provisions of this chapter shall not prevent:

1. (1) A person from manufacturing wine at his or her residence for consumption at his or her residence as permitted by section one of this article;

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

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

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

5. (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. For purposes of this subdivision, “wine” includes dessert wines manufactured exclusively by natural fermentation and port, sherry and Madeira wines having an alcoholic content of not more than twenty-two percent alcohol by
ARTICLE 8. SALE OF WINES.

§60-8-2. Definitions.

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

2 “Commissioner” or “commission” means the West Virginia alcohol beverage control commissioner.

3 “Distributor” means any person whose principal place of business is within the state of West Virginia and who is engaged in selling or distributing wine to retailers or private wine restaurants and selling or distributing port, sherry and Madeira wines to wine specialty shops under authority of this article and actually maintains a warehouse in this state for the distribution of wine.

4 “Fortified wine” shall mean any wine to which brandy or other alcohol has been added and shall include dessert wines which are not fortified: Provided, That a dessert wine manufactured exclusively by natural fermentation and having an alcoholic content of not more than twenty-two percent alcohol by volume and which has been matured in wooden barrels or casks and manufactured, served or sold by a farm winery is not a fortified wine.

5 “Grocery store” means any retail establishment, commonly known as a grocery store, supermarket, delicatessen, caterer or party supply store, where food, food products and supplies for the table are sold for consumption off the premises with average monthly sales (exclusive of sales of wine) of not less than five hundred dollars and an average monthly inventory (exclusive of inventory of wine) of not less than three thousand dollars. The term “grocery store” shall also include and mean a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products and supplies for the table for consumption off the premises.
with average monthly sales with respect to such separate  
or segregated portion (exclusive of sales of wine) of not  
less than three thousand dollars and an average monthly  
inventory (exclusive of inventory of wine) of not less than  
three thousand dollars.

“Licensee” means the holder of a license granted under  
the provisions of this article.

“Private wine restaurant” means a restaurant which: (1)  
Is a partnership, limited partnership, corporation, unincor-  
porated association or other business entity which has as  
its principal purpose the business of serving meals on its  
premises to its members and their guests; (2) is licensed  
under the provisions of this article as to all of its premises  
or as to a separate segregated portion of its premises to  
serve wine to its members and their guests when such sale  
accompanies the serving of food or meals; and (3) admits  
only duly elected and approved dues paying members and  
their guests while in the company of a member, and does  
not admit the general public.

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

“Supplier” means any manufacturer, producer, proces-  
sor, distributor or supplier of wine who sells or offers to  
sell or solicits or negotiates the sale of wine to any licensed  
West Virginia distributor.

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

“Taxpayer” means any person liable for any tax, inter-  
est, additions to tax or penalty under the provisions of this  
article and any person claiming a refund of tax.

“Varietal wine” means any wine labeled according to the  
grape variety from which such wine is made.
“Vintage wine” or “vintage-dated wine” means wines from which the grapes used to produce such wine are harvested during a particular year or wines produced from the grapes of a particular harvest in a particular region of production.

“Wine” means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits or honey or other agricultural products containing sugar and to which no alcohol has been added and shall include table wine, and shall exclude fortified wine and shall also exclude any product defined as or embraced within the definition of nonintoxicating beer under the provisions of article sixteen, chapter eleven of this code: Provided, That “wine” shall include dessert wines manufactured exclusively by natural fermentation, and port, sherry and Madeira wines having an alcoholic content of not more than twenty-two percent alcohol by volume and which have been matured in wooden barrels or casks if produced by a farm winery as defined in section five-a, article one of this chapter.

“Wine specialty shop” means a retailer who shall deal principally in the sale of table wine, certain fortified wines, wine accessories and food or foodstuffs normally associated with wine and: (1) Who shall maintain a representative number of such wines for sale in his or her inventory which are designated by label as varietal wine, vintage, generic and/or according to region of production and the inventory shall contain not less than fifteen percent vintage or vintage-dated wine by actual bottle count; and (2) who, any other provisions of this code to the contrary notwithstanding, may maintain an inventory of port, sherry and Madeira wines having an alcoholic content of not more than twenty-two percent alcohol by volume and which have been matured in wooden barrels or casks.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 17th Day of March, 2003.

Governor
PRESENTED TO THE
GOVERNOR

Date    3/13/03
Time    8:50 a.m.