

**FILED**

2005 MAY -4 A 11: 07

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# **WEST VIRGINIA LEGISLATURE**

FIRST REGULAR SESSION, 2005

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**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 2266**

(By Delegates Doyle, Hatfield and Amores)

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Passed April 9, 2005

In Effect Ninety Days from Passage

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**E N R O L L E D**

COMMITTEE SUBSTITUTE

FOR

**H. B. 2266**

(BY DELEGATES DOYLE, HATFIELD AND AMORES)

[Passed April 9, 2005; in effect ninety days from passage]

AN ACT to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating to imposing a one hundred dollar per year fee for licenses allowing wine sampling events by wine retailers; restrictions on wine sampling events; allowing licensed restaurants to offer sealed bottles of wine produced by a West Virginia farm winery for sale off the premises; authorizing a special license to allow the sale and serving of wine by nonprofit charitable organizations and associations for certain purposes during one-day events; and authorizing special licenses for heritage fairs and festivals allowing the sale, serving and sampling of wine from a West Virginia farm winery.

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

That §60-8-3 of the Code of West Virginia, 1931, 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 five-a,  
2 article one of this chapter, no person may engage in business in  
3 the capacity of a distributor, retailer or private wine restaurant  
4 without first obtaining a license from the Commissioner, nor  
5 shall a person continue to engage in any such activity after his  
6 or her license has expired, been suspended or revoked. No  
7 person may be licensed simultaneously as a distributor and a  
8 retailer, as a distributor and a private wine restaurant, or as a  
9 retailer and a private wine restaurant.

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

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

18 (2) One hundred fifty dollars per year for a retailer's  
19 license;

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

21 (4) Fifty dollars for each sales representative of or em-  
22 ployed by a licensed distributor;

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

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

40 (7) One hundred dollars per year for a wine sampling  
41 license issued for a retailer under subsection (n) of this section;  
42 and

43 (8) No fee shall be charged for a special one-day license  
44 under subsection (o) of this section or for a heritage fair and  
45 festival license under subsection (p) of this section.

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

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

53 (e) No retailer may be licensed as a Class A retail dealer in  
54 nonintoxicating beer as provided by article sixteen, chapter  
55 eleven of this code: *Provided*, That a delicatessen, a caterer or  
56 party supply store which is a grocery store as defined in section  
57 two of this article and which is licensed as a Class A retail  
58 dealer in nonintoxicating beer may be a retailer under this  
59 article: *Provided, however*, That any delicatessen, caterer or

60 party supply store licensed in both such capacities must  
61 maintain average monthly sales exclusive of sales of wine and  
62 nonintoxicating beer which exceed the average monthly sales  
63 of nonintoxicating beer.

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

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

80 (h) The Commissioner may issue a special license for the  
81 retail sale of wine at any festival or fair which is endorsed or  
82 sponsored by the governing body of a municipality or a county  
83 commission. Such special license shall be issued for a term of  
84 no longer than ten consecutive days and the fee therefor shall be  
85 two hundred fifty dollars regardless of the term of the license  
86 unless the applicant is the manufacturer of said wine on a farm  
87 winery as defined in section five-a, article one of this chapter,  
88 in which event the fee shall be twenty-five dollars. The applica-  
89 tion for such license shall contain such information as the  
90 Commissioner may reasonably require and shall be submitted  
91 to the Commissioner at least thirty days prior to the first day  
92 when wine is to be sold at such festival or fair. A farm winery

93 licensed under this subsection may exhibit, conduct tastings, not  
94 to exceed a reasonable serving, and may sell wine only for  
95 consumption off the premises of such festival or fair. A special  
96 license issued other than to a farm winery may be issued to a  
97 “wine club” as defined hereinbelow. The festival or fair  
98 committee or the governing body shall designate a person to  
99 organize a club under a name which includes the name of the  
100 festival or fair and the words “wine club.” The license shall be  
101 issued in the name of the wine club. A licensee may not  
102 commence the sale of wine as provided in this subsection until  
103 the wine club has at least fifty dues paying members who have  
104 been enrolled and to whom membership cards have been issued.  
105 Thereafter, new members may be enrolled and issued member-  
106 ship cards at any time during the period for which the license is  
107 issued. A wine club licensed under the provisions of this  
108 subsection may sell wine only to its members, and in portions  
109 not to exceed eight ounces per serving. Such sales shall take  
110 place on premises or in an area cordoned or segregated so as to  
111 be closed to the general public, and the general public shall not  
112 be admitted to such premises or area. A wine club licensee  
113 under the provisions of this subsection shall be authorized to  
114 serve complimentary samples of wine in moderate quantities  
115 for tasting.

116       A license issued under the provisions of this subsection and  
117 the licensee holding such license shall be subject to all other  
118 provisions of this article and the rules and orders of the Com-  
119 missioner relating to such special license: *Provided*, That the  
120 Commissioner may by rule, regulation, or order provide for  
121 certain waivers or exceptions with respect to such provisions,  
122 rules, regulations, or orders as the circumstances of each such  
123 festival or fair may require, including, without limitation, the  
124 right to revoke or suspend any license issued pursuant to this  
125 section prior to any notice or hearing notwithstanding the  
126 provisions of section twelve of this article: *Provided, however*,  
127 That under no circumstances shall the provisions of subsection

128 (c) or (d), section twenty of this article be waived nor shall any  
129 exception be granted with respect thereto. .

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

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

148 (j) With respect to subsections (h), (i), (n) and (o) of this  
149 section, the Commissioner shall promulgate legislative rules in  
150 accordance with the provisions of chapter twenty-nine-a of this  
151 code with regard to the form of the applications, the suitability  
152 of both the applicant and location of the licensed premises and  
153 such other legislative rules deemed necessary to carry the  
154 provisions of such subsections into effect.

155 (k) The Commissioner shall promulgate legislative rules in  
156 accordance with the provisions of chapter twenty-nine-a of this  
157 code to allow restaurants to serve West Virginia wine with  
158 meals, but not to sell the wine by the bottle. Each restaurant so  
159 licensed shall be charged a fee less than that charged for a wine

160 license to a retail outlet, such fees to be set forth in the afore-  
161 mentioned rules promulgated pursuant to this subsection.

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

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

169 (n) A retailer under this article may also hold a wine  
170 sampling license authorizing the retailer to conduct special  
171 wine sampling events at a licensed retail location during regular  
172 hours of business. The retailer may serve up to three compli-  
173 mentary samples of wine, consisting of no more than one ounce  
174 each, to any one consumer in one day. Persons serving the  
175 complimentary samples must be twenty-one years of age and  
176 duly employed by the licensed retailer, farm winery, or a  
177 representative of a distributor or registered supplier. Distributor  
178 and supplier representatives attending wine sampling events  
179 must be duly licensed by the Commissioner. No licensee,  
180 employee, or representative may furnish, give or serve compli-  
181 mentary samples of wine to any person less than twenty—one  
182 years of age or to a person who is physically incapacitated due  
183 to the consumption of alcoholic liquor or the use of drugs. The  
184 retailer shall notify and secure permission from the Commis-  
185 sioner for all wine sampling events one month prior to the  
186 event. Wine sampling events may not exceed six hours per  
187 calendar day. Licensees must purchase all wines used during  
188 these events from a West Virginia farm winery or a licensed  
189 West Virginia distributor.

190 (o) The Commissioner may issue special one-day licenses  
191 to duly organized, nonprofit corporations and associations  
192 allowing the sale and serving of wine when raising money for



193 athletic, charitable, educational or religious purposes. The  
194 license application shall contain information as the Commis-  
195 sioner may reasonably require and shall be submitted to the  
196 Commissioner at least thirty days prior to the event. Wines used  
197 during these events may be donated by or purchased from a  
198 licensed retailer, distributor or West Virginia farm winery.  
199 Under no circumstances may the provision of subsection (c),  
200 section twenty of this article be waived nor may any exception  
201 be granted with respect thereto.

202 (p) The Commissioner may issue special licenses to  
203 heritage fairs and festivals allowing the sale, serving and  
204 sampling of wine from a West Virginia farm winery. The  
205 license application shall contain information required by the  
206 Commissioner and shall be submitted to the Commissioner at  
207 least thirty days prior to the event. Wines used during these  
208 events may be donated by or purchased from a West Virginia  
209 farm winery. Under no circumstances may the provision of  
210 subsection (c), section twenty of this article be waived nor may  
211 any exception be granted with respect thereto. The Commis-  
212 sioner shall propose rules for legislative approval in accordance  
213 with article three, chapter twenty-nine-a of this code to imple-  
214 ment the provisions of this subsection.

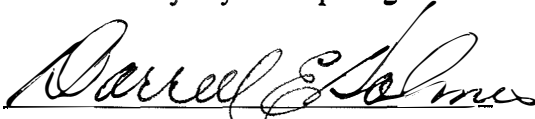
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


  
\_\_\_\_\_  
Chairman Senate Committee

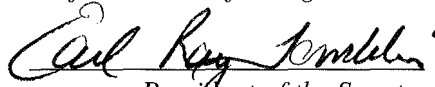
  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 4<sup>th</sup>  
day of May, 2005.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAY 2 2005

Time 4:00 pm