WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2005

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 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.

(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 obtaining a license from the Commissioner, nor shall a person continue to engage in any such activity after his or her 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;
(6) Twenty-five dollars per year for a West Virginia wine retailer license, and each separate retail outlet from which a West Virginia wine retailer sells West Virginia wine shall be separately licensed and there shall be collected with respect to each such location the annual license fee of twenty-five dollars as herein provided. The holder of such a license may sell no wines except those produced by West Virginia farm wineries as defined by section five-a, article one of this chapter. Except for the amount of the license fee and the restriction to sales of West Virginia wines, a West Virginia wine retailer is subject to all other provisions of this article which are applicable to a retailer as defined in section two of this article;

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

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

(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, a caterer or party supply store 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, caterer or
party supply store 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 establish-
ment. 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 therefor 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 applica-
tion 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 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 member-
ship 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 and orders of the Com-
missioner 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 orders 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 subsection
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: Provided, That a licensed private wine restaurant may offer for sale for consumption off the premises, sealed bottles of wine produced by West Virginia farm winery. 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 subsections (h), (i), (n) and (o) of this section, the Commissioner shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code with regard to the form of the applications, the suitability of both the applicant and location of the licensed premises and such other legislative rules deemed necessary to carry the provisions of such subsections into effect.

(k) The Commissioner shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code 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 afore-
mentioned rules promulgated pursuant to this subsection.

(I) 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 and in any other media, includ-
ing, but not limited to, newspaper, radio, television, magazines
and direct mail solicitation.

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

(o) The Commissioner may issue special one-day licenses
to duly organized, nonprofit corporations and associations
allowing the sale and serving of wine when raising money for
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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 day of May, 2005.

Governor
PRESENTED TO THE GOVERNOR

MAY 2 2005

Time 4:00