ENROLLED

House Bill No. 2960

(By Mr. Speaker, Mr. Kiss, and Delegates Ashley, Argento, Boggs, Stemple, Michael, Campbell, Stalnaker, Schadler and Hall)

Passed April 6, 2005

In Effect July 1, 2005
AN ACT to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating to permitting licensed restaurants to sell sealed bottles of wine produced by a West Virginia winery for consumption off the premises.

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, 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’s 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.

(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 establishment. 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 application 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 for 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 membership 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, regulations and orders of the Commissioner 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 (c) or (d), section twenty of this article be waived nor shall any exception be granted with respect thereto.

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 restaurant may offer for sale off the premises, sealed bottles of wine
produced by a 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) and (i) 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.

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

C. Randy White
Chairman Senate Committee

Richard Buice
Chairman House Committee

Originating in the House.

In effect July 1, 2005.

Darrell Jasper
Clerk of the Senate

Sue M. DeSelle
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Lawrence M. Kissell
Speaker of the House of Delegates

The within was approved this the 18th day of April, 2005.

Governor
PRESENTED TO THE GOVERNOR

Date 4/21/05

Time 3:00 PM