

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2012



**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 4376**

(By Delegates Brown, Craig, D. Poling,  
R. Phillips, Hunt, Swartzmiller, Michael,  
Skaff, Walters and Nelson)



Passed March 8, 2012

To Take Effect From Passage

HB 4376

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COMMITTEE SUBSTITUTE

FOR

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**H. B. 4376**

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(BY DELEGATES BROWN, CRAIG, D. POLING,  
R. PHILLIPS, HUNT, SWARTZMILLER, MICHAEL,  
SKAFF, WALTERS AND NELSON)

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[Passed March 8, 2012; to take effect from passage.]

AN ACT to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating to licensing wine sales at certain professional baseball stadiums; providing license fees; providing a definition of professional baseball stadium; providing standards for licensing and authority for the commissioner to regulate such sales; and granting rule-making authority.

*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) No person may engage in business in the capacity of
- 2 a winery, farm winery, supplier, distributor, retailer, private

3 wine bed and breakfast, private wine restaurant, private wine  
4 spa or wine specialty shop without first obtaining a license  
5 from the commissioner, nor shall a person continue to engage  
6 in any such activity after his or her license has expired, been  
7 suspended or revoked. No person may be licensed  
8 simultaneously as a distributor and a retailer. No person,  
9 except for a winery or farm winery, may be licensed  
10 simultaneously as a supplier and a retailer. No person may be  
11 licensed simultaneously as a supplier and a private wine bed  
12 and breakfast, private wine restaurant or a private wine spa.  
13 No person may be licensed simultaneously as a distributor  
14 and a private wine bed and breakfast, a private wine  
15 restaurant or a private wine spa. No person may be licensed  
16 simultaneously as a retailer and a private wine bed and  
17 breakfast, a private wine restaurant or a private wine spa.

18 (b) The commissioner shall collect an annual fee for  
19 licenses issued under this article, as follows:

20 (1) One hundred fifty dollars per year for a supplier's  
21 license;

22 (2) Twenty-five hundred dollars per year for a  
23 distributor's license and each separate warehouse or other  
24 facility from which a distributor sells, transfers or delivers  
25 wine shall be separately licensed and there shall be collected  
26 with respect to each such location the annual license fee of  
27 \$2,500 as herein provided;

28 (3) One hundred fifty dollars per year for a retailer's  
29 license;

30 (4) Two hundred fifty dollars per year for a wine  
31 specialty shop license, in addition to any other licensing fees  
32 paid by a winery or retailer holding such a license, except for  
33 the amount of the license fee and the restriction to sales of

34 winery or farm winery wincs, a winery or farm winery acting  
35 as a wine specialty shop retailer is subject to all other  
36 provisions of this article which are applicable to a wine  
37 specialty shop retailer as defined in section two of this article;

38 (5) One hundred fifty dollars per year for a wine tasting  
39 license;

40 (6) One hundred fifty dollars per year for a private wine  
41 bed and breakfast license, and each separate bed and  
42 breakfast from which a licensee sells wine shall be separately  
43 licensed and there shall be collected with respect to each such  
44 location the annual license fee of \$150 as herein provided;

45 (7) Two hundred fifty dollars per year for a private wine  
46 restaurant license, and each separate restaurant from which a  
47 licensee sells wine shall be separately licensed and there shall  
48 be collected with respect to each such location the annual  
49 license fee of \$250 as herein provided;

50 (8) One hundred fifty dollars per year for a private wine  
51 spa license and each separate private wine spa from which a  
52 licensee sells wine shall be separately licensed and there shall  
53 be collected with respect to each such location the annual  
54 license fee of \$150 as herein provided;

55 (9) One hundred fifty dollars per year for a wine  
56 sampling license issued for a wine specialty shop under  
57 subsection (n) of this section;

58 (10) No fee shall be charged for a special one-day license  
59 under subsection (p) of this section or for a heritage fair and  
60 festival license under subsection (q) of this section; and

61 (11) One hundred fifty dollars per year for a direct  
62 shipper's license for a licensee who sells and ships only wine

63 and \$250 per for a direct shipper's license who ships and  
64 sells wine, nonfortified dessert wine, port, sherry or Madeira  
65 wines.

66 (12) Three hundred dollars per year for a multicapacity  
67 winery or farm winery license which shall enable the holder  
68 to operate as a retailer, wine specialty shop, supplier and  
69 direct shipper without obtaining an individual license for  
70 each capacity.

71 (c) The license period shall begin on July 1, of each year  
72 and end on June 30 of the following year and if granted for a  
73 less period, the same shall be computed semiannually in  
74 proportion to the remainder of the fiscal year.

75 (d) No retailer may be licensed as a private club as  
76 provided by article seven of this chapter, except as provided  
77 by subsection (k) of this section.

78 (e) No retailer may be licensed as a Class A retail dealer  
79 in nonintoxicating beer as provided by article sixteen, chapter  
80 eleven of this code: *Provided*, That a delicatessen, a caterer  
81 or party supply store which is a grocery store as defined in  
82 section two of this article and which is licensed as a Class A  
83 retail dealer in nonintoxicating beer may be a retailer under  
84 this article: *Provided, however*, That any delicatessen, caterer  
85 or party supply store licensed in both such capacities must  
86 maintain average monthly sales exclusive of sales of wine  
87 and nonintoxicating beer which exceed the average monthly  
88 sales of nonintoxicating beer.

89 (f) A wine specialty shop under this article may also hold  
90 a wine tasting license authorizing such retailer to serve  
91 complimentary samples of wine in moderate quantities for  
92 tasting. Such wine specialty shop shall organize a wine  
93 taster's club, which has at least fifty duly elected or approved

94 dues-paying members in good standing. Such club shall meet on  
95 the wine specialty shop's premises not more than one time per  
96 week and shall either meet at a time when the premises are  
97 closed to the general public, or shall meet in a separate  
98 segregated facility on the premises to which the general public  
99 is not admitted. Attendance at tastings shall be limited to duly  
100 elected or approved dues-paying members and their guests.

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

106 (h) The commissioner may issue a special license for the  
107 retail sale of wine at any festival or fair which is endorsed or  
108 sponsored by the governing body of a municipality or a  
109 county commission. Such special license shall be issued for  
110 a term of no longer than ten consecutive days and the fee  
111 therefor shall be \$250 regardless of the term of the license  
112 unless the applicant is the manufacturer of said wine on a  
113 winery or a farm winery as defined in section five-a, article  
114 one of this chapter, in which event the fee shall be \$50 if the  
115 event is held on the premises of the winery or farm winery.  
116 The application for such license shall contain such  
117 information as the commissioner may reasonably require and  
118 shall be submitted to the commissioner at least thirty days  
119 prior to the first day when wine is to be sold at such festival  
120 or fair. A winery or a farm winery licensed under this  
121 subsection may exhibit, conduct tastings, not to exceed a  
122 reasonable serving, and may sell wine only for consumption  
123 off the premises of such festival or fair. A special license  
124 issued other than to a winery or a farm winery may be issued  
125 to a "wine club" as defined herein below. The festival or fair  
126 committee or the governing body shall designate a person to  
127 organize a club under a name which includes the name of the

128 festival or fair and the words "wine club". The license shall  
129 be issued in the name of the wine club. A licensee may not  
130 commence the sale of wine as provided in this subsection  
131 until the wine club has at least fifty dues-paying members  
132 who have been enrolled and to whom membership cards have  
133 been issued. Thereafter, new members may be enrolled and  
134 issued membership cards at any time during the period for  
135 which the license is issued. A wine club licensed under the  
136 provisions of this subsection may sell wine only to its  
137 members, and in portions not to exceed eight ounces per  
138 serving. Such sales shall take place on premises or in an area  
139 cordoned or segregated so as to be closed to the general  
140 public, and the general public shall not be admitted to such  
141 premises or area. A wine club licensee under the provisions  
142 of this subsection shall be authorized to serve complimentary  
143 samples of wine in moderate quantities for tasting.

144 A license issued under the provisions of this subsection  
145 and the licensee holding such license shall be subject to all  
146 other provisions of this article and the rules and orders of the  
147 commissioner relating to such special license: *Provided,*  
148 That the commissioner may by rule, regulation or order  
149 provide for certain waivers or exceptions with respect to such  
150 provisions, rules, regulations or orders as the circumstances  
151 of each such festival or fair may require, including, without  
152 limitation, the right to revoke or suspend any license issued  
153 pursuant to this section prior to any notice or hearing  
154 notwithstanding the provisions of section twenty-seven and  
155 twenty-eight of this article: *Provided, however,* That under  
156 no circumstances shall the provisions of subsection (c) or (d),  
157 section twenty of this article be waived nor shall any  
158 exception be granted with respect thereto.

159 A license issued under the provisions of this subsection  
160 and the licensee holding such license shall not be subject to  
161 the provisions of subsection (g) of this section.

162 (i) (A) The commissioner may issue a special license for  
163 the retail sale of wine in a professional baseball stadium. A  
164 license to sell wine granted pursuant to this subsection  
165 entitles the licensee to sell and serve wine, for consumption  
166 in a professional baseball stadium. For the purpose of this  
167 subsection, "professional baseball stadium" means a facility  
168 constructed primarily for the use of a major or minor league  
169 baseball franchisee affiliated with the National Association of  
170 Professional Baseball Leagues, Inc., or its successor, and  
171 used as a major or minor league baseball park. Any special  
172 license issued pursuant to this subsection shall be for a term  
173 beginning on the date of issuance and ending on the next  
174 following June 30, and its fee is \$250 regardless of the length  
175 of the term of the license. The application for the special  
176 license shall contain information as the commissioner may  
177 reasonably require and must be submitted to the  
178 commissioner at least thirty days prior to the first day when  
179 wine is to be sold at the professional baseball stadium. The  
180 special license may be issued in the name of the baseball  
181 franchisee or the name of the primary food and beverage  
182 vendor under contract with the baseball franchisee. These  
183 sales must take place within the confines of the professional  
184 baseball stadium, provided that the exterior of the area where  
185 wine sales may occur are surrounded by a fence or other  
186 barrier prohibiting entry except upon the franchisee's express  
187 permission, and under the conditions and restrictions  
188 established by the franchisee, so that the wine sales area is  
189 closed to free and unrestricted entry by the general public.

190 (B) A license issued under this subsection and the  
191 licensee holding the license is subject to all other provisions  
192 of this article and the rules and orders of the commissioner  
193 relating to the special license: *Provided*, That the  
194 commissioner may by rule or order grant certain waivers or  
195 exceptions to those rules or orders as the circumstances of  
196 each such professional baseball stadium may require,

197 including, without limitation, the right to revoke or suspend  
198 any license issued pursuant to this section prior to any notice  
199 or hearing notwithstanding sections twenty-seven and  
200 twenty-eight of this article: *Provided, however,* That under no  
201 circumstances may subsection (c) or (d), section twenty of  
202 this article be waived nor shall any exception be granted  
203 concerning those subsections.

204 (C) The commissioner has the authority to propose rules  
205 for legislative approval in accordance with article three,  
206 chapter twenty-nine-a of this code to implement this  
207 subsection.

208 (j) A license to sell wine granted to a private wine bed  
209 and breakfast, private wine restaurant, private wine spa or a  
210 private club under the provisions of this article entitles the  
211 operator to sell and serve wine, for consumption on the  
212 premises of the licensee, when such sale accompanies the  
213 serving of food or a meal to its members and their guests in  
214 accordance with the provisions of this article: *Provided,* That  
215 a licensed private wine bed and breakfast, private wine  
216 restaurant, private wine spa or a private club may permit a  
217 person over twenty-one years of age to purchase wine,  
218 consume wine and recork or reseal, using a tamper resistant  
219 cork or seal, up to two separate bottles of unconsumed wine  
220 in conjunction with serving of food or a meal to its members  
221 and their guests in accordance with the provisions of this  
222 article and in accordance with regulations promulgated by the  
223 commissioner for the purpose of consumption of said wine  
224 off premises: *Provided, however,* That for this article, food  
225 or a meal provided by the private licensee means that the total  
226 food purchase, excluding beverage purchases, taxes, gratuity  
227 or other fees is at least \$15: *Provided further,* That a licensed  
228 private wine restaurant or a private club may offer for sale for  
229 consumption off the premises, sealed bottles of wine to its  
230 customers provided that no more than one bottle is sold per

231 each person over twenty-one years of age, as verified by the  
232 private wine restaurant or private club, for consumption off  
233 the premises. Such licensees are authorized to keep and  
234 maintain on their premises a supply of wine in such quantities  
235 as may be appropriate for the conduct of operations thereof.  
236 Any sale of wine so made shall be subject to all restrictions  
237 set forth in section twenty of this article. A private wine  
238 restaurant may also be licensed as a Class A retail dealer in  
239 nonintoxicating beer as provided by article sixteen, chapter  
240 eleven of this code.

241 (k) With respect to subsections (h), (i), (j), (o) and (p) of  
242 this section, the commissioner shall promulgate legislative  
243 rules in accordance with the provisions of chapter  
244 twenty-nine-a of this code with regard to the form of the  
245 applications, the suitability of both the applicant and location  
246 of the licensed premises and such other legislative rules  
247 deemed necessary to carry the provisions of such subsections  
248 into effect.

249 (l) The commissioner shall promulgate legislative rules in  
250 accordance with the provisions of chapter twenty-nine-a of  
251 this code to allow restaurants to serve wine with meals, and  
252 to sell wine by the bottle for off-premises consumption as  
253 provided in subsection (j) of this section. Each restaurant so  
254 licensed shall be charged an additional \$100 per year fee.

255 (m) The commissioner shall establish guidelines to permit  
256 wines to be sold in all stores licensed for retail sales.

257 (n) Wineries and farm wineries may advertise off  
258 premises as provided in section seven, article twenty-two,  
259 chapter seventeen of this code.

260 (o) A wine specialty shop under this article may also hold  
261 a wine sampling license authorizing the wine specialty shop

262 to conduct special wine sampling events at a licensed wine  
263 specialty shop location during regular hours of business. The  
264 wine specialty shop may serve up to three complimentary  
265 samples of wine, consisting of no more than one ounce each,  
266 to any one consumer in one day. Persons serving the  
267 complimentary samples must be twenty-one years of age and  
268 an authorized representative of the licensed wine specialty  
269 shop, winery, farm winery or a representative of a distributor  
270 or registered supplier. Distributor and supplier representatives  
271 attending wine sampling events must be registered with the  
272 commissioner. No licensee, employee or representative may  
273 furnish, give or serve complimentary samples of wine to any  
274 person less than twenty-one years of age or to a person who  
275 is physically incapacitated due to the consumption of  
276 alcoholic liquor or the use of drugs. The wine specialty shop  
277 shall notify and secure permission from the commissioner for  
278 all wine sampling events one month prior to the event. Wine  
279 sampling events may not exceed six hours per calendar day.  
280 Licensees must purchase all wines used during these events  
281 from a licensed farm winery or a licensed distributor.

282 (p) The commissioner may issue special one-day licenses  
283 to duly organized, nonprofit corporations and associations  
284 allowing the sale and serving of wine when raising money for  
285 athletic, charitable, educational or religious purposes. The  
286 license application shall contain information as the  
287 commissioner may reasonably require and shall be submitted  
288 to the commissioner at least thirty days prior to the event.  
289 Wines used during these events may be donated by or  
290 purchased from a licensed retailer, a distributor or a farm  
291 winery. Under no circumstances may the provision of  
292 subsection (c), section twenty of this article be waived nor  
293 may any exception be granted with respect thereto.

294 (q) The commissioner may issue special licenses to  
295 heritage fairs and festivals allowing the sale, serving and

296 sampling of wine from a licensed farm winery. The license  
297 application shall contain information required by the  
298 commissioner and shall be submitted to the commissioner at  
299 least thirty days prior to the event. Wines used during these  
300 events may be donated by or purchased from a licensed farm  
301 winery. Under no circumstances may the provision of  
302 subsection (c), section twenty of this article be waived nor  
303 may any exception be granted with respect thereto. The  
304 commissioner shall propose rules for legislative approval in  
305 accordance with article three, chapter twenty-nine-a of this  
306 code to implement the provisions of this subsection.

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

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

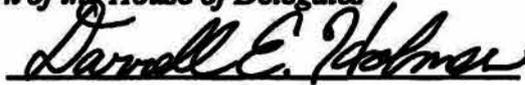
  
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Chairman, Senate Committee

Originating in the House.

To take effect from passage.

FILED  
2012 MAR 20 PM 4:03  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

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

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

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

The within was passed this the 20th  
day of March, 2012.

  
\_\_\_\_\_  
Governor

**PRESENTED TO THE GOVERNOR**

**MAR 15 2012**

**Time** 9:50 am