WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4376


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
wine bed and breakfast, private wine restaurant, private wine
spa or wine specialty shop 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. No person,
except for a winery or farm winery, may be licensed
simultaneously as a supplier and a retailer. No person may be
licensed simultaneously as a supplier and a private wine bed
and breakfast, private wine restaurant or a private wine spa.
No person may be licensed simultaneously as a distributor
and a private wine bed and breakfast, a private wine
restaurant or a private wine spa. No person may be licensed
simultaneously as a retailer and a private wine bed and
breakfast, a private wine restaurant or a private wine spa.

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

(1) One hundred fifty dollars per year for a supplier’s
license;

(2) 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
$2,500 as herein provided;

(3) One hundred fifty dollars per year for a retailer’s
license;

(4) Two hundred fifty dollars per year for a wine
specialty shop license, in addition to any other licensing fees
paid by a winery or retailer holding such a license, except for
the amount of the license fee and the restriction to sales of
winyery or farm winery wines, a winery or farm winery acting
as a wine specialty shop retailer is subject to all other
provisions of this article which are applicable to a wine
specialty shop retailer as defined in section two of this article;

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

(6) One hundred fifty dollars per year for a private wine
bed and breakfast license, and each separate bed and
breakfast 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 $150 as herein provided;

(7) 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 $250 as herein provided;

(8) One hundred fifty dollars per year for a private wine
spa license and each separate private wine spa 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 $150 as herein provided;

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

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

(11) One hundred fifty dollars per year for a direct
shipper’s license for a licensee who sells and ships only wine
and $250 per for a direct shipper’s license who ships and
sells wine, nonfortified dessert wine, port, sherry or Madeira
wines.

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

(c) The license period shall begin on July 1, of each year
and end on June 30 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, except as provided
by subsection (k) of this section.

(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 wine specialty shop 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 wine specialty shop shall organize a wine
taster’s club, which has at least fifty duly elected or approved
dues-paying members in good standing. Such club shall meet on the wine specialty shop'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.

(101) 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 $250 regardless of the term of the license unless the applicant is the manufacturer of said wine on a winery or a farm winery as defined in section five-a, article one of this chapter, in which event the fee shall be $50 if the event is held on the premises of the winery or farm winery. 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 winery or 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 winery or a farm winery may be issued to a "wine club" as defined herein below. 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 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 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 twenty-seven and
twenty-eight 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) The commissioner may issue a special license for the retail sale of wine in a professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine, for consumption in a professional baseball stadium. For the purpose of this subsection, "professional baseball stadium" means a facility constructed primarily for the use of a major or minor league baseball franchisee affiliated with the National Association of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league baseball park. Any special license issued pursuant to this subsection shall be for a term beginning on the date of issuance and ending on the next following June 30, and its fee is $250 regardless of the length of the term of the license. The application for the special license shall contain information as the commissioner may reasonably require and must be submitted to the commissioner at least thirty days prior to the first day when wine is to be sold at the professional baseball stadium. The special license may be issued in the name of the baseball franchisee or the name of the primary food and beverage vendor under contract with the baseball franchisee. These sales must take place within the confines of the professional baseball stadium, provided that the exterior of the area where wine sales may occur are surrounded by a fence or other barrier prohibiting entry except upon the franchisee's express permission, and under the conditions and restrictions established by the franchisee, so that the wine sales area is closed to free and unrestricted entry by the general public.

(B) A license issued under this subsection and the licensee holding the license is subject to all other provisions of this article and the rules and orders of the commissioner relating to the special license: Provided, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders as the circumstances of each such professional baseball stadium 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 sections twenty-seven and twenty-eight of this article: Provided, however, That under no circumstances may subsection (c) or (d), section twenty of this article be waived nor shall any exception be granted concerning those subsections.

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

(j) A license to sell wine granted to a private wine bed and breakfast, private wine restaurant, private wine spa or a private club 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 bed and breakfast, private wine restaurant, private wine spa or a private club may permit a person over twenty-one years of age to purchase wine, consume wine and recork or reseal, using a tamper resistant cork or seal, up to two separate bottles of unconsumed wine in conjunction with serving of food or a meal to its members and their guests in accordance with the provisions of this article and in accordance with regulations promulgated by the commissioner for the purpose of consumption of said wine off premises: Provided, however, That for this article, food or a meal provided by the private licensee means that the total food purchase, excluding beverage purchases, taxes, gratuity or other fees is at least $15: Provided further, That a licensed private wine restaurant or a private club may offer for sale for consumption off the premises, sealed bottles of wine to its customers provided that no more than one bottle is sold per
each person over twenty-one years of age, as verified by the private wine restaurant or private club, for consumption off the premises. 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.

(k) With respect to subsections (h), (i), (j), (o) and (p) 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.

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

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

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

(o) A wine specialty shop under this article may also hold a wine sampling license authorizing the wine specialty shop
to conduct special wine sampling events at a licensed wine specialty shop location during regular hours of business. The wine specialty shop may serve up to three complimentary 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 an authorized representative of the licensed wine specialty shop, winery, farm winery or a representative of a distributor or registered supplier. Distributor and supplier representatives attending wine sampling events must be registered with the commissioner. No licensee, employee or representative may furnish, give or serve complimentary 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 wine specialty shop shall notify and secure permission from the commissioner 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 licensed farm winery or a licensed distributor.

(p) 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 athletic, charitable, educational or religious purposes. The license application shall contain information as the commissioner may reasonably require and shall be submitted to the commissioner at least thirty days prior to the event. Wines used during these events may be donated by or purchased from a licensed retailer, a distributor or a farm winery. Under no circumstances may the provision of subsection (c), section twenty of this article be waived nor may any exception be granted with respect thereto.

(q) The commissioner may issue special licenses to heritage fairs and festivals allowing the sale, serving and
sampling of wine from a licensed farm winery. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least thirty days prior to the event. Wines used during these events may be donated by or purchased from a licensed farm winery. Under no circumstances may the provision of subsection (c), section twenty of this article be waived nor may any exception be granted with respect thereto. The commissioner shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this 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

Chairman, Senate Committee

Originating in the House.
To take effect from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within received this the 20th day of December, 2012.

Governor
PRESENTED TO THE GOVERNOR

MAR 15 2012

Time 9:50 a.m.