ENROLLED

House Bill No. 4529

(By Delegates Manchin, Ferro, Lawrence, Pethtel, Boggs and Skaff)

Passed March 7, 2014

In effect ninety days from passage.
AN ACT to amend and reenact §60-8-2 and §60-8-16 of the Code of West Virginia, 1931, as amended, all relating to the sale of wine generally; expanding the definition of “person” for purposes of holding a distributor license; allowing trusts, limited liability companies and associations to hold a distributor’s license; and requiring certain disclosures by applicants that are trusts, limited liability companies or associations.

Be it enacted by the Legislature of West Virginia:

That §60-8-2 and §60-8-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to all read as follows:

ARTICLE 8. SALE OF WINES.

PART II. SALE OF WINE GENERALLY.

§60-8-2. Definitions.

1 Unless the context in which used clearly requires a different meaning, as used in this article:

2 “Commissioner” or “commission” means the West Virginia Alcohol Beverage Control Commissioner.
“Distributor” means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute wine to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs or wine specialty shops and that sells or distributes nonfortified dessert wine, port, sherry and Madeira wines to wine specialty shops, private wine restaurants, private clubs or retailers under authority of this article and maintains a warehouse in this state for the distribution of wine. For the purpose of a distributor only, the term “person” means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in article ten, chapter forty-four-d of this code.

“Fortified wine” means any wine to which brandy or other alcohol has been added and shall include dessert wines which are not fortified having an alcohol content by volume of at least fourteen and one-tenths percent and not exceeding sixteen percent.

“Grocery store” means any retail establishment, commonly known as a grocery store, supermarket, delicatessen, caterer or party supply store, where food, food products and supplies for the table are sold for consumption off the premises with average monthly sales (exclusive of sales of wine) of not less than $500 and an average monthly inventory (exclusive of inventory of wine) of not less than $3,000. The term “grocery store” shall also include and mean a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products and supplies for the table for consumption off the premises with average monthly sales with respect to such separate or segregated portion (exclusive of sales of wine) of not less than $3,000 and an average monthly inventory (exclusive of inventory of wine) of not less than $3,000.

“Licensee” means the holder of a license granted under the provisions of this article.
“Person” means and includes an individual, firm, partnership, limited partnership, limited liability company, association or corporation.

“Private wine bed and breakfast” means any business with the sole purpose of providing, in a residential or country setting, a hotel, motel, inn or other such establishment properly zoned as to its municipality or local ordinances, lodging and meals to its customers in the course of their stay at the establishment, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when such sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public.

“Private wine restaurant” means a restaurant which: (1) Is a partnership, limited partnership, corporation, unincorporated association or other business entity which has as its principal purpose the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when such sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public. Such private clubs that meet the private wine restaurant requirements numbered (1), (2) and (3) in this definition shall be considered private wine restaurants.

“Private wine spa” means any business with the sole purpose of providing commercial facilities devoted especially to health, fitness, weight loss, beauty, therapeutic services and relaxation, and may be also a licensed massage parlor or a salon with licensed beauticians or stylists, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this
article as to all of its premises or as to a separate segregated
portion of its premises to serve up to two glasses of wine to its
members and their guests when such sale accompanies the
serving of food or meals; and (3) admits only duly elected and
approved dues-paying members and their guests while in the
company of a member, and does not admit the general public.

"Retailer" means any person licensed to sell wine at retail to
the public at his or her established place of business for
off-premises consumption and who is licensed to do so under
authority of this article.

"Supplier" means any manufacturer, producer, processor,
winery, farm winery, national distributor or other supplier of
wine who sells or offers to sell or solicits or negotiates the sale
of wine to any licensed West Virginia distributor.

"Tax" includes within its meaning interest, additions to tax
and penalties.

"Taxpayer" means any person liable for any tax, interest,
additions to tax or penalty under the provisions of this article and
any person claiming a refund of tax.

"Varietal wine" means any wine labeled according to the
grape variety from which such wine is made.

"Vintage wine" or "vintage-dated wine" means wines from
which the grapes used to produce such wine are harvested during
a particular year or wines produced from the grapes of a
particular harvest in a particular region of production.

"Wine" means any alcoholic beverage obtained by the
natural fermentation of the natural content of grapes, other fruits
or honey or other agricultural products containing sugar and to
which no alcohol has been added and shall include table wine,
and shall exclude fortified wine and shall also exclude any
product defined as or embraced within the definition of
nonintoxicating beer under the provisions of article sixteen,
chapter eleven of this code.

"Wine specialty shop" means a retailer who shall deal
principally in the sale of table wine, nonfortified dessert wines,
wine accessories and food or foodstuffs normally associated with
wine and: (1) Who shall maintain a representative number of such wines for sale in his or her inventory which are designated by label as varietal wine, vintage, generic and/or according to region of production and the inventory shall contain not less than fifteen percent vintage or vintage-dated wine by actual bottle count; and (2) who, any other provisions of this code to the contrary notwithstanding, may maintain an inventory of port, sherry and Madeira wines having an alcoholic content of not more than twenty-two percent alcohol by volume and which have been matured in wooden barrels or casks.

§60-8-16. Application for license.

(a) Any person desiring a license under this article shall file a written application for a license with the commissioner and in the application shall state under oath:

(1) The name of the applicant, including his or her trade name if any, his or her address and the length of his or her residence within this state;

(2) The address of the place of business for which the license is desired, or other description that definitely locates it; and that the place of business conforms to all health and fire laws and regulations applicable thereto;

(3) The name of the owner of the premises upon which the business is to be conducted and, if the owner is not the applicant, that such applicant is the bona fide lessee of the business;

(4) If the application is for a retailer's license, that the applicant is the proprietor or owner of a bona fide grocery store, private wine bed and breakfast, private wine restaurant, private wine spa or wine specialty shop;

(5) That the applicant intends to carry on the business authorized by the license for himself or herself or under his or her immediate supervision or direction;

(6) That the applicant is a citizen of the United States;

(7) That the applicant is an actual bona fide resident of the State of West Virginia, except for those applicants applying for a supplier's license or a direct shipper's license;
(8) That the applicant is not less than eighteen years of age;

(9) That the applicant has not been convicted of a felony or other crime involving moral turpitude within the three years next preceding the filing of the application; and that he or she has not, within the two years next preceding the filing of the application, been convicted of violating the liquor laws of any state or of the United States;

(10) That the applicant has not during the five years next preceding the date of said application had any license revoked under this chapter or under the liquor laws of any other state;

(11) If the applicant is a firm, association, partnership, limited partnership, limited liability company or corporation, the application shall state the matters required in subdivisions (6), (7), (8), (9) and (10), with respect to each of the members thereof, and each of said members must meet all the requirements in said subdivisions;

(12) If the applicant is a corporation, organized or authorized to do business in this state, the application shall state the matters required in subdivisions (6), (7), (8), (9) and (10), with respect to each of the officers and directors thereof, and any stockholder owning twenty percent or more of the stock of such corporation and the persons who conduct and manage the licensed premises for the corporation. Each of said individuals must meet all the requirements provided in those subdivisions except that the requirements as to citizenship and residence shall not apply to the officers, directors and stockholders of a corporation applying for a retailer’s license; and

(13) If the applicant is a trust or has a trust as an owner, the trustees or other persons in active control of the activities of the trust relating to the license shall provide a certification of trust as described in section one thousand thirteen, article ten, chapter forty-four-d of this code. This certification of trust shall include the excerpts described in subsection (e), section one thousand thirteen, article ten, chapter forty-four-d of this code and shall further state, under oath, the names, addresses, Social Security numbers and birth dates of the beneficiaries of the trust and certify that the trustee and beneficiaries are twenty-one years of age or older. If a beneficiary is not twenty-one years of age, the
certification of trust must state that the beneficiary’s interest in the trust is represented by a trustee, parent or legal guardian who is twenty-one years of age and who will direct all actions on behalf of the beneficiary related to the trust with respect to the distributor until the beneficiary is twenty-one years of age. Any beneficiary who is not twenty-one years of age or older shall have his or her trustee, parent or legal guardian include in the certification of trust and state under oath his or her name, address, social security number and birth date.

(14) Any other information that the commissioner may reasonably require.

The foregoing statements required in an application are mandatory prerequisites for the issuance of a license.

The application must be verified by the owner, or in the case of a firm, partnership, limited partnership, limited liability company, association or trust, the members, officers, trustees or other persons in active control of the activities of the limited liability company, association or trust relating to the license. The application of a corporation applying for a retailer’s license need be verified only by its president or vice president.

(b) In the case of an applicant that is a trust or has a trust as an owner, a distributor license may be issued only upon submission by the trustees or other persons in active control of the activities of the trust relating to the distributor license of a true and correct copy of the written trust instrument to the commissioner for his or her review. Notwithstanding any provision of law to the contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this section is confidential and is not a public record and is not available for release pursuant to the West Virginia Freedom of Information Act codified in article one, chapter twenty-nine-b of this code.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 28th day of March, 2014.

Governor
PRESENTED TO THE GOVERNOR

Mar 28 2011

Time 10:45 AM