WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 450
(Senators Walters, Blair, Carmichael, McCabe, Palumbo and Wells, original sponsors)

[Passed March 8, 2014; in effect from passage.]
An act to amend and reenact §60-1-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60-8-3 of said code, all relating to the licensed sale and consumption of alcoholic beverages in outdoor settings adjacent to public places; relating to the sale of liquors in liquors in outdoor dining areas adjoining an ABCA-licensed facility; permitting the sale of wine at certain college and university sports stadiums; establishing the conditions under which wine may be sold; setting a licensing fee; establishing who may hold a license; stating where wine may be served; granting the authority to grant waivers and exceptions and to revoke licenses; defining a term; authorizing rulemaking; and clarifying the definition of public place as it relates to such special licenses.

Be it enacted by the Legislature of West Virginia:

That §60-1-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §60-8-3 of said code be amended and reenacted, all to read as follows:

§60-1-5. Definitions.

For the purposes of this chapter:

"Alcohol" shall mean ethyl alcohol whatever its origin and shall include synthetic ethyl alcohol but not denatured alcohol.

"Beer" shall mean any beverage obtained by the fermentation of barley, malt, hops or any other similar product or substitute and containing more alcohol than that of nonintoxicating beer.

"Nonintoxicating beer" shall mean any beverage obtained by the fermentation of barley, malt, hops or similar products or substitute and containing not more alcohol than that specified by section two, article sixteen, chapter eleven of this code.

"Wine" shall mean any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar.

"Spirits" shall mean any alcoholic beverage obtained by distillation and mixed with potable water and other substances in solution and includes brandy, rum, whiskey, cordials and gin.

"Alcoholic liquor" shall include alcohol, beer, wine and spirits and any liquid or solid capable of being used as a beverage, but shall not include nonintoxicating beer.

"Original package" shall mean any closed or sealed container or receptacle used for holding alcoholic liquor.

"Sale" shall mean any transfer, exchange or barter in any manner or by any means, for a consideration, and shall
include all sales made by principal, proprietor, agent or employee.

"Selling" shall include solicitation or receipt of orders; possession for sale; and possession with intent to sell.

"Person" shall mean an individual, firm, partnership, limited partnership, corporation or voluntary association.

"Manufacture" means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor.

"Manufacturer" shall mean any person engaged in the manufacture of any alcoholic liquor, and among others includes a distiller, a rectifier, a wine maker and a brewer.

"Brewery" shall mean an establishment where beer is manufactured or in any way prepared.

"Winery" shall mean an establishment where wine is manufactured or in any way prepared.

"Distillery" shall mean an establishment where alcoholic liquor other than wine or beer is manufactured or in any way prepared.

"Public place" shall mean any place, building or conveyance to which the public has, or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies and corridors of hotels and any highway, street, lane, park or place of public resort or amusement: Provided, That the term "public place" shall not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of this chapter to sell alcoholic liquors for consumption on the premises: Provided, however, That the
term “public place” shall not mean or include any legally
demarcated area designated solely for the consumption of
beverages and freshly prepared food that directly connects
and adjoins any portion or portions of a premises that
qualifies and is licensed under the provisions of this chapter
to sell alcoholic liquors for consumption thereupon: Provided
further, That the term “public place” shall also not include a
facility constructed primarily for the use of a Division I
college that is a member of the National Collegiate Athletic
Association, or its successor, and used as a football,
basketball, baseball, soccer or other Division I sports stadium
which holds a special license to sell wine pursuant to the
provisions of section three, article eight of this chapter, in the
designated areas of sale and consumption of wine and other
restrictions established by that section and the terms of the
special license issued thereunder.

“State liquor store” shall mean a store established and
operated by the commission under this chapter for the sale of
alcoholic liquor in the original package for consumption off
the premises.

“An agency” shall mean a drugstore, grocery store or
general store designated by the commission as a retail
distributor of alcoholic liquor for the West Virginia Alcohol
Beverage Control Commissioner.

“Department” shall mean the organization through which
the commission exercises powers imposed upon it by this
chapter.

“Commissioner” or “commission” shall mean the West
Virginia Alcohol Beverage Control Commissioner.

“Intoxicated” shall mean having one's faculties impaired
by alcohol or other drugs to the point where physical or
mental control or both are markedly diminished.
ARTICLE 8. SALE OF WINES.

§60-8-3. Licenses; fees; general restrictions.

(a) No person may engage in business in the capacity of 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 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 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 a license, except for the amount of the license fee and the restriction to sales of winery 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 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 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 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 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 the 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.

(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 $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 the license shall contain 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 the festival or fair. A winery or a farm winery licensed under this subsection may exhibit, conduct tastings or sell samples, not to exceed a reasonable serving of three ounces, and may sell wine samples for consumption on the premises during the operation of a festival or fair: Provided, That for licensed wineries or farm wineries at a licensed festival or fair the tastings, samples and off-premises sales shall occur under the
hours of operation as required in this article, except that on
Sunday tastings, samples and off-premises sales are unlawful
between the hours of 2:00 a.m. and 10:00 a.m. 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. The 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 the 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 the license shall be 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, regulation or order provide for
certain waivers or exceptions with respect to the provisions,
rules, regulations or orders as the circumstances of each
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 the license is not 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 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 the 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 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 other legislative rules deemed
necessary to carry the provisions of the 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.

(r)(1) The commissioner may issue a special license for
the retail sale of wine in a college stadium. A license to sell
wine granted pursuant to this subsection entitles the licensee
to sell and serve wine for consumption in a college stadium.
For the purpose of this subsection, “college stadium” means
a facility constructed primarily for the use of a Division I
college that is a member of the National Collegiate Athletic
Association, or its successor, and used as a football,
basketball, baseball, soccer or other Division I sports
stadium. A special license issued pursuant to this subsection
shall be for a term beginning on the date of its 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. The special license may be
issued in the name of the National Collegiate Athletic
Association Division I college or university or the name of
the primary food and beverage vendor under contract with
that college or university. These sales must take place within
the confines of the college 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 college or university’s express permission,
and under the conditions and restrictions established by the
college or university, so that the wine sales area is closed to
free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee
are subject to the other requirements 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 the college 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
subsection (c) or (d), section twenty of this article may not be
waived, nor shall any exception be granted concerning those
subsections.

(3) The commissioner may propose rules for legislative
approval in accordance with article three, chapter twenty-
nine-a of this code to implement this subsection.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect 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 27th Day of March, 2014.

Governor
PRESENTED TO THE GOVERNOR

MAR 2 7 2014

Time 3:00 pm