

**H. B. 3178**

(By Delegate Perdue)

[Introduced February 17, 2011; referred to the  
Committee on Health and Human Resources then Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §11-16-13 of the Code of West Virginia, 1931, as amended; to amend said code by adding a new article, designated §16-43-1, §16-43-2 and §16-43-3 of said code; to amend and reenact §60-3A-17 of said code; and to amend and reenact §60-8-4 of said code, all relating to funding for substance abuse services through increased taxes on beer, wine and liquor; increasing the barrel tax on nonintoxicating beer; increasing the tax on purchases of liquor; increasing the liter tax; creating a Prevention, Intervention, Treatment and Recovery Fund to fund substance abuse programs; creating the Alcohol and Drug Disbursement Board; setting forth the board's membership and term lengths; and requiring annual reports be made to the Legislature.

*Be it enacted by the Legislature of West Virginia:*

That §11-16-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new article, designated §16-43-1, §16-43-2 and §16-43-3;

1 that §60-3A-17 of said code be amended and reenacted; and that §60-  
 2 8-4 of said code be amended and reenacted, all to read as follow:

3 **CHAPTER 11. TAXATION.**

4 **ARTICLE 16. NONINTOXICATING BEER.**

5 **§11-16-13. Barrel tax on nonintoxicating beer.**

6 (a) There is hereby levied and imposed, in addition to the  
 7 license taxes provided for in this article, a tax of ~~five dollars~~  
 8 ~~and fifty cents~~ \$11 on each barrel of thirty-one gallons and in  
 9 like ratio on each part barrel of nonintoxicating beer manufactured  
 10 in this state for sale within this state, whether contained or sold  
 11 in barrels, bottles or other containers, and a like tax is hereby  
 12 levied and imposed upon all nonintoxicating beer manufactured  
 13 outside of this state and brought into this state for sale within  
 14 this state; but no nonintoxicating beer manufactured, sold or  
 15 distributed in this state is subject to more than one barrel tax:  
 16 Provided, That \$5.50 of the barrel tax shall be paid into the  
 17 "Prevention, Intervention, Treatment and Recovery Fund", as  
 18 provided in article forty-three, chapter sixteen of this code.

19 The brewer manufacturing or producing nonintoxicating beer within  
 20 this state for sale within this state shall pay the barrel tax on  
 21 such nonintoxicating beer, and, except as provided otherwise, the  
 22 distributor who is the original consignee of nonintoxicating beer  
 23 manufactured or produced outside of this state, or who brings such  
 24 nonintoxicating beer into this state, shall pay the barrel tax on  
 25 such nonintoxicating beer manufactured or produced outside of this  
 26 state: *Provided, That the barrel tax imposed by this section shall*

1 not apply to nonintoxicating beer manufactured by a brewpub.

2 (b) On or before the tenth day of each month during the  
3 license period, every brewer or operator of a brewpub who  
4 manufactures or produces nonintoxicating beer within this state  
5 shall file a report in writing, under oath, to the Tax  
6 Commissioner, in the form prescribed by the Tax Commissioner,  
7 stating its total sales, or in the case of a brewpub, its total  
8 estimated production of nonintoxicating beer within this state  
9 during that month, and at the same time shall pay the tax levied by  
10 this article on such production. On or before the tenth day of  
11 each month during the license period, every distributor who is the  
12 original consignee of nonintoxicating beer manufactured or produced  
13 outside this state or who brings such beer into this state for sale  
14 shall file a report in writing, under oath, to the Tax  
15 Commissioner, in the form prescribed by the Tax Commissioner,  
16 stating its total estimated purchases of such nonintoxicating beer  
17 during that month, and at the same time shall pay the tax thereon  
18 levied by this article for such estimated monthly purchase:  
19 *Provided*, That the Tax Commissioner may allow, or require, a brewer  
20 who manufactures or produces nonintoxicating beer outside this  
21 state to file the required report and pay the required tax on  
22 behalf of its distributor or distributors. Any brewer or  
23 distributor or operator of a brewpub who files a report under this  
24 subsection may adjust its monthly estimated sales or purchases or  
25 production report or reports by filing amended reports by the  
26 twenty-fifth day of the reporting month.

1 (c) Every brewer or distributor or operator of a brewpub who  
2 files a report under subsection (b) of this section shall file a  
3 final monthly report of said sales or purchases or production, in  
4 a form and at a time prescribed by the Tax Commissioner, stating  
5 actual nonintoxicating beer sales, purchases, or production and  
6 other information which the Tax Commissioner may require, and shall  
7 include a remittance for any barrel tax owed for actual sales or  
8 purchases or production made in excess of the amount estimated for  
9 that month.

10 (d) Any brewer or distributor or operator of a brewpub who  
11 files a report pursuant to subsection (b) of this section  
12 reflecting an underestimation of twenty-five percent or more of  
13 actual sales or purchases or production of nonintoxicating beer as  
14 shown by the report filed pursuant to subsection (c) of this  
15 section shall be assessed a penalty of one percent of the total  
16 taxes due in such prior month.

17 (e) Brewers and distributors and operators of brewpubs shall  
18 keep all records which relate to the sale or purchase in this state  
19 of nonintoxicating beer for a period of three years unless written  
20 approval for earlier disposal is granted by the Tax Commissioner.

21 (f) Brewpubs shall keep such records as required by the  
22 federal government and may, in lieu of the recordkeeping and  
23 reporting requirements contained in subsections (a) through (e) of  
24 this section, file copies of the federal reports contemporaneously  
25 with the Tax Commissioner at the time of such filings with the  
26 federal government. The filing of duplicate copies of the federal

1 reports with the State Tax Commissioner shall be deemed as  
2 compliance with subsections (a) through (e) of this section.

3 **CHAPTER 16. PUBLIC HEALTH.**

4 **ARTICLE 43. SUBSTANCE ABUSE PREVENTION, INTERVENTION, TREATMENT**  
5 **AND RECOVERY.**

6 **§16-43-1. Purpose.**

7 The purpose of this article is to take bold, aggressive action  
8 against the substance abuse problems that are pervasive in this  
9 state. Changing the environment in our state that currently permits  
10 the problem to thrive requires the implementation of a well  
11 developed state plan.

12 **§16-43-2. Prevention, Intervention, Treatment and Recovery Fund.**

13 The "Prevention, Intervention, Treatment and Recovery Fund" is  
14 created by this section within the State Treasury. Revenues  
15 generated by an increased barrel tax on nonintoxicating beer  
16 pursuant to section thirteen, article sixteen, chapter eleven of  
17 this code, an increased tax on the sale of liquor pursuant to  
18 section seventeen, article three-a, chapter sixty of this code and  
19 an increased liter tax pursuant to section four, article eight,  
20 chapter sixty of this code on the sale of wine shall be transferred  
21 into that special account. Expenditures from the fund shall be for  
22 the purposes set forth in this article and are not authorized from  
23 general collections but are to be made only in accordance with  
24 appropriation by the Legislature and in accordance with the  
25 provisions of article three, chapter twelve of this code and upon  
26 fulfillment of the provisions of article two, chapter eleven-b of

1 this code. Funds shall be expended in a manner consistent with the  
2 "Governor's Comprehensive Strategic Plan to Address Substance Abuse  
3 in West Virginia." Priority consideration will be given to unserved  
4 areas of the state. The Alcohol and Drug Disbursement Board shall  
5 develop a grant program to be staffed by the Bureau for Behavioral  
6 Health and Health Facilities.

7 **§16-43-3. The Alcohol and Drug Disbursement Board.**

8 (a) The Alcohol and Drug Disbursement Board is created by this  
9 section and will make decisions on how the money in the Prevention,  
10 Intervention, Treatment and Recovery Fund is to be spent to enhance  
11 the services available in the state to reduce drug and alcohol  
12 abuse. The board shall consist of thirteen members with the  
13 Secretary of the Department of Health and Human Resources serving  
14 ex officio as the chair. The board shall be appointed as follows:

15 (1) One circuit court judge appointed by the Judicial  
16 Association;

17 (2) One addiction specialist appointed by the Behavioral  
18 Health Provider's Association;

19 (3) One representative of the Partnership to Promote Community  
20 Well-Being;

21 (4) One representative of the West Virginia Association of  
22 Alcohol and Drug Abuse Counselors;

23 (5) One representative of the West Virginia Association of  
24 Fellowship Homes;

25 (6) One representative of the Bureau of Behavioral Health and  
26 Health Facilities;

1       (7) One representative of the Mental Health Consumer's  
2 Association;

3       (8) One representative of the West Virginia Controlled  
4 Substance Advisory Board;

5       (9) One representative of sheriffs appointed by the West  
6 Virginia Sheriffs Association;

7       (10) One representative of the State Police appointed by the  
8 secretary of the Department of Military Affairs and Public Safety;

9       (11) One member of the Senate appointed by the President of  
10 the Senate, who shall serve as a nonvoting member; and

11       (12) One member of the House of Delegates appointed by the  
12 Speaker of the House of Delegates, who shall serve as a nonvoting  
13 member.

14       All decisions of the board shall be evidence-based and data  
15 driven.

16       (b) The members of the board shall each serve terms that begin  
17 on July 1, 2011. Of the initial appointments to the board, four  
18 shall serve for two-year terms, three shall serve for three-year  
19 terms and three shall serve for four-year terms. Thereafter, each  
20 appointment shall be for a four-year term commencing upon the  
21 expiration of his or her previous term or of his or her  
22 predecessor's term. No member may be appointed for more than three  
23 consecutive terms. Vacancies shall be appointed in a like manner  
24 for the balance of an unexpired term.

25       (c) An annual report shall be prepared for the Legislative  
26 Oversight Commission on Health and Human Resource Accountability to

1 inform the commission of the methodology used to make funding  
2 decisions and the funding decisions made.

3           **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

4 **ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

5 **§60-3A-17. Wholesale prices set by commissioner; retail licensees**  
6           **to purchase liquor from state; transportation and**  
7           **storage; method of payment.**

8           (a) The commissioner shall fix wholesale prices for the sale  
9 of liquor, other than wine, to retail licensees. The commissioner  
10 shall sell liquor, other than wine, to retail licensees according  
11 to a uniform pricing schedule. The commissioner shall obtain if  
12 possible, upon request, any liquor requested by a retail licensee.

13           (b) Wholesale prices shall be established in order to yield a  
14 net profit for the General Fund of not less than \$6.5 million  
15 annually on an annual volume of business equal to the average for  
16 the past three years. The net revenue derived from the sale of  
17 alcoholic liquors shall be deposited into the General Revenue Fund  
18 in the manner provided in section seventeen, article three of this  
19 chapter: Provided, That wholesale prices shall be set in a manner  
20 to yield a net profit, for the Prevention, Intervention, Treatment  
21 and Recovery Fund created by section two, article forty-three,  
22 chapter sixteen of this code, of not less than \$6,500,000 annually  
23 on an annual volume of business equal to the average for the past  
24 three years.

25           (c) The commissioner shall specify the maximum wholesale  
26 markup percentage which may be applied to the prices paid by the



1 commissioner for all liquor, other than wine, in order to determine  
2 the prices at which all liquor, other than wine, will be sold to  
3 retail licensees. A retail licensee shall purchase all liquor,  
4 other than wine, for resale in this state only from the  
5 commissioner, and the provisions of sections twelve and thirteen,  
6 article six of this chapter shall not apply to the transportation  
7 of the liquor: *Provided*, That a retail licensee shall purchase  
8 wine from a wine distributor who is duly licensed under article  
9 eight of this chapter. All liquor, other than wine, purchased by  
10 retail licensees shall be stored in the state at the retail outlet  
11 or outlets operated by the retail licensee: *Provided, however*,  
12 That the commissioner, in his or her discretion, may upon written  
13 request permit a retail licensee to store liquor at a site other  
14 than the retail outlet or outlets.

15 (d) The sale of liquor by the commissioner to retail licensees  
16 shall be paid by electronic funds transfer which shall be initiated  
17 by the commissioner on the business day following the retail  
18 licensees order or by money order, certified check or cashier's  
19 check which shall be received by the commissioner at least  
20 twenty-four hours prior to the shipping of the alcoholic liquors:  
21 *Provided*, That if a retail licensee posts with the commissioner an  
22 irrevocable letter of credit or bond with surety acceptable to the  
23 commissioner from a financial institution acceptable to the  
24 commissioner guaranteeing payment of checks, then the commissioner  
25 may accept the retail licensee's checks in an amount up to the  
26 amount of the letter of credit.

1 (e) (1) A retail licensee may not sell liquor to persons  
2 licensed under the provisions of article seven of this chapter at  
3 less than one hundred ten percent of the retail licensee's cost as  
4 defined in section six, article eleven-a, chapter forty-seven of  
5 this code.

6 (2) A retail licensee may not sell liquor to the general  
7 public at less than one hundred ten percent of the retail  
8 licensee's cost as defined in section six, article eleven-a,  
9 chapter forty-seven of this code.

10 **ARTICLE 8. SALE OF WINES.**

11 **§60-8-4. Liter tax.**

12 There is hereby levied and imposed on all wine sold after July  
13 1, 2007, by suppliers to distributors, and including all wine sold  
14 and sent to West Virginia adult residents from direct shippers,  
15 except wine sold to the commissioner, a tax of ~~twenty-six and four~~  
16 ~~hundred six-thousandths~~ 52.812 cents per liter: Provided, That  
17 26.406 cents of this tax be paid into the Prevention, Intervention,  
18 Treatment and Recovery Fund created by section two, article forty-  
19 three, chapter sixteen of this code.

20 Before the sixteenth day of each month thereafter, every  
21 supplier, distributor and direct shipper shall make a written  
22 report under oath to the Tax Commissioner and the commissioner  
23 showing the identity of the purchaser, the quantity, label and  
24 alcoholic content of wine sold by the supplier to West Virginia  
25 distributors or the direct shipper to West Virginia adult residents  
26 during the preceding month and at the same time shall pay the tax

1 imposed by this article on the wine sold to the distributor or the  
2 West Virginia adult residents during the preceding month to the Tax  
3 Commissioner.

4       The reports shall contain other information and be in the form  
5 the Tax Commissioner may require. For purposes of this article,  
6 the reports required by this section shall be considered tax  
7 returns covered by the provisions of article ten, chapter eleven of  
8 this code. Failure to timely file the tax returns within five  
9 calendar days of the sixteenth day of each month will also subject  
10 a supplier, distributor and direct shipper to penalties under  
11 section eighteen of this article.

12       No wine imported, sold or distributed in this state or sold  
13 and shipped to this state by a direct shipper shall be subject to  
14 more than one liter tax.

NOTE: The purpose of this bill is to provide funding for substance abuse services through increased taxes on beer, wine and liquor. The bill increases the barrel tax on nonintoxicating beer, increases the tax on purchases of liquor and wine, and increases the liter tax. The bill creates a Prevention, Intervention, Treatment and Recovery Fund to fund substance abuse programs. The bill creates the Alcohol and Drug Disbursement Board. The bill sets forth the board's membership and term lengths. The bill also requires annual reports be made to the Legislature.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§16-43-1, §16-43-2 and §16-43-3 are new; therefore, they have been completely underscored.