

H. B. 2937

(By Delegates Perdue, Williams, H. White and Miley)

[Introduced February 24, 2015; referred to the

Committee on Health and Human Resources then Finance.]

A BILL to amend and reenact §11-16-13 of the Code of West Virginia, 1931, as amended; to amend and reenact §60-8-4 of said code; and to amend and reenact §60-3A-17, all relating to designating \$5 million per year, for four years, collected from beer, wine, and liquor taxes to the Fight Substance Abuse Fund.

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

CHAPTER 11. TAXATION

ARTICLE 16. NONINTOXICATING BEER.

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

(a) There is hereby levied and imposed, in addition to the license taxes provided for in this article, a tax of \$5.50 on each barrel of thirty-one gallons and in like ratio on each part barrel of

1 nonintoxicating beer manufactured in this state for sale within this state, whether contained or sold
2 in barrels, bottles or other containers, and a like tax is hereby levied and imposed upon all
3 nonintoxicating beer manufactured outside of this state and brought into this state for sale within this
4 state; but no nonintoxicating beer manufactured, sold or distributed in this state is subject to more
5 than one barrel tax. The brewer manufacturing or producing nonintoxicating beer within this state
6 for sale within this state shall pay the barrel tax on such nonintoxicating beer, and, except as
7 provided otherwise, the distributor who is the original consignee of nonintoxicating beer
8 manufactured or produced outside of this state, or who brings such nonintoxicating beer into this
9 state, shall pay the barrel tax on such nonintoxicating beer manufactured or produced outside of this
10 state: *Provided*, That the barrel tax imposed by this section shall not apply to nonintoxicating beer
11 manufactured by a brewpub. Beginning on July 1, 2015, and for four fiscal years, the Legislature
12 shall make available a yearly total of \$5 million to the Fight Substance Abuse Fund created pursuant
13 to section section six, article nine, chapter sixty-A of this code. The total amount shall be allocated
14 from the taxes collected pursuant to this section, section four, article eight, chapter sixty of this code
15 and section seventeen, article three-A , chapter sixty of this code.

16 (b) On or before the tenth day of each month during the license period, every brewer or
17 operator of a brewpub who manufactures or produces nonintoxicating beer within this state shall file
18 a report in writing, under oath, to the Tax Commissioner, in the form prescribed by the Tax
19 Commissioner, stating its total sales, or in the case of a brewpub, its total estimated production of
20 nonintoxicating beer within this state during that month, and at the same time shall pay the tax levied
21 by this article on such production. On or before the tenth day of each month during the license
22 period, every distributor who is the original consignee of nonintoxicating beer manufactured or

1 produced outside this state or who brings such beer into this state for sale shall file a report in
2 writing, under oath, to the Tax Commissioner, in the form prescribed by the Tax Commissioner,
3 stating its total estimated purchases of such nonintoxicating beer during that month, and at the same
4 time shall pay the tax thereon levied by this article for such estimated monthly purchase: *Provided,*
5 That the Tax Commissioner may allow, or require, a brewer who manufactures or produces
6 nonintoxicating beer outside this state to file the required report and pay the required tax on behalf
7 of its distributor or distributors. Any brewer or distributor or operator of a brewpub who files a report
8 under this subsection may adjust its monthly estimated sales or purchases or production report or
9 reports by filing amended reports by the twenty-fifth day of the reporting month.

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

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

21 (e) Brewers and distributors and operators of brewpubs shall keep all records which relate
22 to the sale or purchase in this state of nonintoxicating beer for a period of three years unless written

1 approval for earlier disposal is granted by the Tax Commissioner.

2 (f) Brewpubs shall keep such records as required by the federal government and may, in lieu
3 of the recordkeeping and reporting requirements contained in subsections (a) through (e) of this
4 section, file copies of the federal reports contemporaneously with the Tax Commissioner at the time
5 of such filings with the federal government. The filing of duplicate copies of the federal reports with
6 the State Tax Commissioner shall be deemed as compliance with subsections (a) through (e) of this
7 section.

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

9 **ARTICLE 8. SALE OF WINES.**

10 **§60-8-4. Liter tax.**

11 There is hereby levied and imposed on all wine sold after July 1, 2007, by suppliers to
12 distributors, and including all wine sold and sent to West Virginia adult residents from direct
13 shippers, except wine sold to the commissioner, a tax of twenty-six and four hundred six-thousandths
14 cents per liter.

15 Before the sixteenth day of each month thereafter, every supplier, distributor and direct
16 shipper shall make a written report under oath to the Tax Commissioner and the commissioner
17 showing the identity of the purchaser, the quantity, label and alcoholic content of wine sold by the
18 supplier to West Virginia distributors or the direct shipper to West Virginia adult residents during
19 the preceding month and at the same time shall pay the tax imposed by this article on the wine sold
20 to the distributor or the West Virginia adult residents during the preceding month to the Tax
21 Commissioner.

22 The reports shall contain other information and be in the form the Tax Commissioner may

1 require. For purposes of this article, the reports required by this section shall be considered tax
2 returns covered by the provisions of article ten, chapter eleven of this code. Failure to timely file the
3 tax returns within five calendar days of the sixteenth day of each month will also subject a supplier,
4 distributor and direct shipper to penalties under section eighteen of this article.

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

7 Beginning on July 1, 2015, and for four fiscal years, the Legislature shall make available a
8 yearly total of \$5 million to the Fight Substance Abuse Fund created pursuant to section section six,
9 article nine, chapter sixty-A of this code. The total amount shall be allocated from the taxes
10 collected pursuant to this section, section seventeen, article three-A of this chapter and section
11 thirteen, article sixteen, chapter eleven of this code.

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

13 **§60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase liquor from** 14 **state; transportation and storage; method of payment.**

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

19 (b) Wholesale prices shall be established in order to yield a net profit for the General Fund
20 of not less than \$6,500,000 annually on an annual volume of business equal to the average for the
21 past three years. The net revenue derived from the sale of alcoholic liquors shall be deposited into
22 the General Revenue Fund in the manner provided in section seventeen, article three of this chapter.

1 Beginning on July 1, 2015, and for four fiscal years, the Legislature shall make available a yearly
2 total of \$5 million to the Fight Substance Abuse Fund created pursuant to section section six, article
3 nine, chapter sixty-A of this code. The total amount shall be allocated from the taxes collected
4 pursuant to this section, section four, article eight of this chapter and section thirteen, article sixteen,
5 chapter eleven of this code.

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

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

1 an amount up to the amount of the letter of credit.

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

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

NOTE: The purpose of this bill is to designate 5 million dollars per year for 4 years from beer, wine, and liquor tax revenue to the Fight Substance Abuse Fund.

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