

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

Introduced

### House Bill 2633

FISCAL  
NOTE

2015 Carryover

(BY DELEGATES PERDUE, MORGAN, HAMILTON AND  
GUTHRIE)

[Introduced January 13, 2016; referred to the  
Committee on Health and Human Resources then  
Finance.]

1 A BILL to amend and reenact §11-16-13 of the Code of West Virginia, 1931, as amended; to  
 2 amend said code by adding a new article, designated §16-46-1 and §16-46-2 of said code;  
 3 to amend and reenact §60-3A-17 of said code; and to amend and reenact §60-8-4 of said  
 4 code, all relating to funding for substance abuse services through increased taxes on beer,  
 5 wine and liquor; increasing the barrel tax on nonintoxicating beer; increasing the tax on  
 6 purchases of liquor; increasing the liter tax; creating a Prevention, Intervention, Treatment  
 7 and Recovery Fund to fund substance abuse programs.

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

1 That §11-16-13 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted; that said code be amended by adding thereto a new article, designated §16-46-1 and  
 3 §16-46-2; that §60-3A-17 of said code be amended and reenacted; and that §60-8-4 of said code  
 4 be amended and reenacted, all to read as follows:

**CHAPTER 11. TAXATION.**

**ARTICLE 16. NONINTOXICATING BEER.**

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

1 (a) There is ~~hereby levied and imposed~~ and imposed, in addition to the license taxes provided for in this  
 2 article, a tax of ~~\$5.50~~ \$11 on each barrel of thirty-one gallons and in like ratio on each part barrel  
 3 of nonintoxicating beer manufactured in this state for sale within this state, whether contained or  
 4 sold in barrels, bottles or other containers, and a like tax is ~~hereby levied and imposed~~ upon all  
 5 nonintoxicating beer manufactured outside of this state and brought into this state for sale within  
 6 this state; but no nonintoxicating beer manufactured, sold or distributed in this state is subject to  
 7 more than one barrel tax: Provided, That \$5.50 of the barrel tax shall be paid into the  
 8 “Prevention, Intervention, Treatment and Recovery Fund”, as provided in article forty-six,  
 9 chapter sixteen of this code. The brewer manufacturing or producing nonintoxicating beer within

10 this state for sale within this state shall pay the barrel tax on such nonintoxicating beer, and,  
11 except as provided otherwise, the distributor who is the original consignee of nonintoxicating beer  
12 manufactured or produced outside of this state, or who brings such nonintoxicating beer into this  
13 state, shall pay the barrel tax on such nonintoxicating beer manufactured or produced outside of  
14 this state: *Provided, ~~That~~ however,* That the barrel tax imposed by this section ~~shall~~ may not  
15 apply to nonintoxicating beer manufactured by a brewpub.

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  
18 file 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  
20 of nonintoxicating beer within this state during that month, and at the same time shall pay the tax  
21 levied by this article on such production. On or before the tenth day of each month during the  
22 license period, every distributor who is the original consignee of nonintoxicating beer  
23 manufactured or produced outside this state or who brings such beer into this state for sale shall  
24 file a report in writing, under oath, to the Tax Commissioner, in the form prescribed by the Tax  
25 Commissioner, stating its total estimated purchases of such nonintoxicating beer during that  
26 month, and at the same time shall pay the tax thereon levied by this article for such estimated  
27 monthly purchase: *Provided,* That the Tax Commissioner may allow, or require, a brewer who  
28 manufactures or produces nonintoxicating beer outside this state to file the required report and  
29 pay the required tax on behalf of its distributor or distributors. Any brewer or distributor or operator  
30 of a brewpub who files a report under this subsection may adjust its monthly estimated sales or  
31 purchases or production report or reports by filing amended reports by the twenty-fifth day of the  
32 reporting month.

33 (c) Every brewer or distributor or operator of a brewpub who files a report under

34 subsection (b) of this section shall file a final monthly report of said sales or purchases or  
 35 production, in a form and at a time prescribed by the Tax Commissioner, stating actual  
 36 nonintoxicating beer sales, purchases, or production and other information which the Tax  
 37 Commissioner may require, and shall include a remittance for any barrel tax owed for actual sales  
 38 or purchases or production made in excess of the amount estimated for that month.

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

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

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

**CHAPTER 16. PUBLIC HEALTH.**

**ARTICLE 46. SUBSTANCE ABUSE PREVENTION, INTERVENTION, TREATMENT  
 AND RECOVERY.**

**§16-46-1. Purpose.**

1 The purpose of this article is to take bold, aggressive action against the substance abuse

2 problems that are pervasive in this state. Changing the environment in our state that currently  
3 permits the problem to thrive requires the implementation of a well developed state plan.

**§16-46-2. Prevention, Intervention, Treatment and Recovery Fund.**

1 The “Prevention, Intervention, Treatment and Recovery Fund” is created by this section  
2 within the State Treasury. Revenues generated by an increased barrel tax on nonintoxicating beer  
3 pursuant to section thirteen, article sixteen, chapter eleven of this code, an increased tax on the  
4 sale of liquor pursuant to section seventeen, article three-a, chapter sixty of this code and an  
5 increased liter tax pursuant to section four, article eight, chapter sixty of this code on the sale of  
6 wine shall be transferred into that special account. Funds shall be expended in a manner  
7 consistent with the “Governor’s Comprehensive Strategic Plan to Address Substance Abuse in  
8 West Virginia.”

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

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

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

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

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

10 profit, for the Prevention, Intervention, Treatment and Recovery Fund created by section two,  
11 article forty-six, chapter sixteen of this code, of not less than \$6.5 million annually on an annual  
12 volume of business equal to the average for the past three years.

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

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

32 (e)(1) A retail licensee may not sell liquor to persons licensed under ~~the provisions of~~  
33 article seven of this chapter at less than one hundred ten percent of the retail licensee's cost as

34 defined in section six, article eleven-a, chapter forty-seven of this code.

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

**ARTICLE 8. SALE OF WINES.**

**§60-8-4. Liter tax.**

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

7 Before the sixteenth day of each month thereafter, every supplier, distributor and direct  
8 shipper shall make a written report under oath to the Tax Commissioner and the commissioner  
9 showing the identity of the purchaser, the quantity, label and alcoholic content of wine sold by the  
10 supplier to West Virginia distributors or the direct shipper to West Virginia adult residents during  
11 the preceding month and at the same time shall pay the tax imposed by this article on the wine  
12 sold to the distributor or the West Virginia adult residents during the preceding month to the Tax  
13 Commissioner.

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

19           No wine imported, sold or distributed in this state or sold and shipped to this state by a  
20 direct shipper shall be subject to 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.

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

§16-46-1 and §16-46-2 are new; therefore, they have been completely underscored.