

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

Introduced

### House Bill 4682

FISCAL  
NOTE

BY DELEGATES SKINNER, MANCHIN, WESTFALL,  
MCCUSKEY, PUSHKIN, FLEISCHAUER, BYRD, MILEY,  
CAPUTO, LONGSTRETH AND SPONAUGLE

[Introduced February 23, 2016; Referred  
to the Committee on Agriculture and Natural  
Resources then Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §11-16A-1, §11-16A-2, §11-16A-3 and §11-16A-4, all relating to the  
 3 agriculture and tourism incentive act; defining applicability; providing a tax credit for capital  
 4 expenditures; limiting local control and providing policies that must be followed in the event  
 5 of a sale of the business.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 article, designated §11-16A-1, §11-16A-2, §11-16A-3 and §11-16A-4, all to read as follows:

**ARTICLE 16A. THE AGRICULTURE AND TOURISM INCENTIVE ACT.**

**§11-16A-1. Applicability of article.**

1 The provisions of this article apply to wineries, farm wineries, micro-breweries and mini-  
 2 distilleries as defined elsewhere in this code.

**§11-16A-2. Capital expenditures tax credit.**

1 (a) As used in this section:

2 “Qualified capital expenditures” means all expenditures made by the taxpayer for the  
 3 purchase and instillation of barrels, bins, bottling equipment, capsulating equipment, chemicals,  
 4 corkers, crushers and destemmers, dirt, fermenters, or other recognized fermentation or  
 5 distillation devices, fertilizer and soil amendments, filters, grape harvesters, grape plants, hoses  
 6 irrigation equipment labeling equipment, poles, posts, presses, pumps, refractometers,  
 7 refrigeration equipment, seeders, tanks or vats, tractors, weeding and spraying equipment, wine,  
 8 beer or alcoholic beverage tanks and wire.

9 (b) For taxable years beginning on or after July 1, 2016, through June 30, 2022, any  
 10 winery, farm winery, microbrewer or mini-distiller is entitled to a credit against the tax levied  
 11 pursuant to article twenty-one of this chapter for qualified capital expenditures made in connection  
 12 with the establishment of a new winery, farm winery, micro-brewery or mini-distillery and capital  
 13 improvements made to existing wineries, farm wineries, micro-brewers or mini-distillers. The

14 amount of the credit is equal to twenty-five percent of all the qualified capital expenditures.

15 (c) The total amount of tax credits available under this section for a calendar year may not  
16 exceed \$250,000. In the event that applications for such credit exceed \$250,000 for any calendar  
17 year, the Department of Revenue shall allocate the credits on a pro rata basis.

18 (d) If the amount of the tax credit exceeds the tax payer's tax liability for the taxable year,  
19 the excess may be carried over for credit against the applicable taxes of the taxpayer in the next  
20 ten taxable years, or until the total tax credit amount has been taken, whichever occurs first.

21 (e) For the purposes of this section, the amount of any credit attributable to a partnership,  
22 electing small business corporation ( S corporation) or limited liability company shall be allocated  
23 to the individual partners, shareholders or members, respectively, in proportion to their ownership  
24 or interest in such business entity.

25 (f) The credit allowed in this section may not be claimed to the extent the taxpayer has  
26 claimed a deduction for the same expenses for federal income tax purposes under §179 of the  
27 Internal Revenue Code.

**§11-16A-3. Locale regulation of activities limited.**

1 (a) Usual and customary events at wineries, farm wineries, micro-breweries and mini-  
2 distilleries are permitted without local regulation unless there is a substantial impact on the health,  
3 safety or welfare of the public.

4 (b) No locality may treat private, personal gatherings held by the owner of a winery or farm  
5 winery who resides at the location or on property adjacent thereto that is owned or controlled by  
6 such owner at which gatherings wine is not sold or marketed and for which no consideration is  
7 received by the winery or farm winery or its agents differently from a private personal gathering  
8 by other citizens.

9 (c) No locality may regulate any activity of a winery, farm winery, micro-brewery or mini-  
10 distillery which is authorized by state law.

**§11-16A-4. Sale of winery, farm winery, micro-brewery or mini-distillery.**

- 1            If any winery, farm winery, micro-brewery or mini-distillery is sold, the new owner shall  
2 honor any existing sale or distribution agreements of the former owner for any brands of product  
3 sold.

NOTE: The purpose of this bill is to enact the agricultural and tourism development act. It covers wineries, farm wineries, micro-breweries, and mini-distilleries. A tax credit is provided for capital expenditures, local regulation is limited and the consequences of a sale of the business are enunciated.

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