

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**Senate Bill 533**

SENATORS HALL AND MULLINS, *original sponsors*

[Passed April 7, 2017; in effect 90 days from passage]



1 AN ACT to amend and reenact §8-13-7 of the Code of West Virginia, 1931, as amended; to amend  
2 and reenact §60-3-9d of said code; and to amend and reenact §60-4-3b of said code, all  
3 relating to the collection of taxes on wine and intoxicating liquors; providing that no wine  
4 or liquor excise tax shall be collected on purchases of wine or intoxicating liquors in the  
5 original sealed package for the purpose of resale if the final purchase of such wine or  
6 intoxicating liquor is subject to the excise tax; and defining terms.

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

1 That §8-13-7 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; that §60-3-9d of said code be amended and reenacted; and that §60-4-3b of said code  
3 be amended and reenacted, all to read as follows:

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 13. TAXATION AND FINANCE.**

#### **§8-13-7. Tax on purchases of intoxicating liquors in municipalities; private club fees.**

1 (a) (1) Every municipality shall have plenary power and authority to levy and collect a tax  
2 upon all purchases within such municipality of intoxicating liquors from the Alcohol Beverage  
3 Control Commissioner, from any person licensed to sell wine at retail to the public under the  
4 provisions of article eight, chapter sixty of this code, or from distributors licensed to sell or  
5 distribute wine pursuant to said article: *Provided*, That no municipality shall have authority to levy  
6 or collect any such tax on the intoxicating liquors sold by or purchased from holders of a license  
7 issued under the provisions of article seven, chapter sixty of this code: *Provided, however*, That  
8 no municipality shall have authority to levy or collect any such tax on purchases within such  
9 municipality of intoxicating liquors or wine in the original sealed package for the purpose of resale  
10 in the original sealed package if the final purchase of such intoxicating liquors or wine is subject  
11 to the tax imposed under this section, under section nine-d, article three, chapter sixty of this  
12 code, or under section twenty-one, article three-a of said chapter. This section shall not be  
13 interpreted to authorize a purchase for resale exemption in contravention of section nine-a, article  
14 fifteen, chapter eleven of this code. The tax shall be levied upon the purchaser and shall be added

15 to and collected with the price of purchase. The tax shall not exceed five percent of the purchase  
16 price.

17 (2) A copy of any ordinance imposing the tax authorized by this section shall be certified  
18 by the mayor of the municipality to the West Virginia Alcohol Beverage Control Commissioner  
19 and to the Tax Commissioner. The West Virginia Alcohol Beverage Control Commissioner by  
20 appropriate rules and regulations shall provide for the collection of such tax upon all purchases  
21 within such municipality of intoxicating liquors from the Alcohol Beverage Control Commissioner,  
22 from any person licensed to sell wine at retail pursuant to the provisions of article eight, chapter  
23 sixty of this code, or from distributors licensed to sell or distribute wine pursuant to said article,  
24 and for distribution thereof to the respective municipalities for which the same shall be collected.  
25 Such rules and regulations shall provide that all such taxes shall be deposited with the State  
26 Treasurer and distributed quarterly by the Treasurer upon warrants of the Auditor payable to the  
27 municipality.

28 (3) Every municipality shall have plenary power and authority to levy and collect a fee from  
29 any private club licensee whose premises are situate therein as authorized in section seven,  
30 article seven, chapter sixty of this code.

31 (b) For purposes of this section:

32 (1) "Original sealed package" means an original package, as defined in this article, bearing  
33 an unbroken seal, as defined in this article. For purposes of this article, the term "original sealed  
34 package" does not mean or include a case, shipping box, carton, bottle caddy, cargo container,  
35 or any other packaging or container that is not in immediate physical contact with its liquid  
36 contents and which is not a "container" as defined in this article;

37 (2) "Original package" means that container, as defined in this article, into which the  
38 manufacturer or bottler of a given liquor or wine first placed a given wine or liquor immediately  
39 after it was produced, which is intended by the manufacturer or bottler to be the container in which  
40 such wine or liquor is to be sold;

41 (3) "Seal" means a piece of wax, foil, metal, plastic or paper affixed to a container of liquor  
42 or wine in such a way that the seal must be broken when the container is opened. The purpose  
43 of a seal is to show evidence of opening, tampering or alteration of the container. A seal bears  
44 some combination of embossed, printed, engraved or impressed emblems, figures, symbols,  
45 words, trademarks, stamps, medallions, marks, or letters for attestation or evidence of  
46 authenticity. A seal is typically affixed to a package or container by the manufacturer or bottler of  
47 a given wine or liquor. The term "seal" may include a seal provided by or specified by this state  
48 and required by law to be affixed to a container of liquor or wine; and

49 (4) "Container" means a bottle, boxed wine box (including the liner, bag or bladder thereof),  
50 cask, can, jug or other holder of liquor or wine, which is in immediate physical contact with the  
51 liquid contents, and which is the only means by which its liquid contents are prevented from  
52 flowing or leaking out of the holder, and which is intended to be the container in which such wine  
53 or liquor is to be sold to final consumers.

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

### **ARTICLE 3. SALES BY COMMISSIONER.**

#### **§60-3-9d. Tax on purchases of intoxicating liquors outside corporate limits of municipalities.**

1 (a) (1) For the purpose of providing financial assistance to and for the use and benefit of  
2 the various counties and municipalities of this state, there is hereby levied a tax upon all  
3 purchases outside the corporate limits of any municipality of intoxicating liquor from state stores  
4 or other agencies of the Alcohol Beverage Control Commissioner, of wine from any person  
5 licensed to sell wine at retail under the provisions of article eight, chapter sixty of this code, and  
6 of wine from distributors licensed to sell or distribute wine under the provisions of said article. The  
7 tax shall be five percent of the purchase price and shall be added to and collected with the  
8 purchase price by the commissioner, by the person licensed to sell wine at retail, or by the

9 distributor licensed to sell or distribute wine, as the case may be: *Provided*, That no such tax shall  
10 be collected on the intoxicating liquors sold by or purchased from holders of a license issued  
11 under the provisions of article seven of this chapter: *Provided, however*, That no such tax shall  
12 be collected on purchases of intoxicating liquors or wine in the original sealed package for the  
13 purpose of resale in the original sealed package if the final purchase of such intoxicating liquors  
14 or wine is subject to the tax imposed under this section, under section seven, article thirteen,  
15 chapter eight of this code, or under section twenty-one, article three-a, chapter sixty of this code.  
16 This section shall not be interpreted to authorize a purchase for resale exemption in contravention  
17 of section nine-a, article fifteen, chapter eleven of this code.

18 (2) All such tax collected within one mile of the corporate limits of any municipality within  
19 the state shall be remitted to such municipality; all other tax so collected shall be remitted to the  
20 county wherein collected: *Provided*, That where the corporate limits of more than one municipality  
21 be within one mile of the place of collection of such tax, all such tax collected shall be divided  
22 equally among each of said municipalities: *Provided, however*, That such mile is measured by the  
23 most direct hard surface road or access way usually and customarily used as ingress and egress  
24 to the place of tax collection.

25 (3) The West Virginia Alcohol Beverage Control Commissioner by appropriate rules and  
26 regulations shall provide for the collection of such tax upon all purchases outside the corporate  
27 limits of any municipality of intoxicating liquor from state stores or other agencies of the Alcohol  
28 Beverage Control Commissioner, separation or proration of the same and distribution thereof to  
29 the respective counties and municipalities for which the same shall be collected. The Tax  
30 Commissioner by appropriate rules and regulations shall provide for the collection of such tax  
31 upon all purchases outside the corporate limits of any municipality of wine from any person  
32 licensed to sell wine at retail under the provisions of article eight, chapter sixty of this code, or  
33 from distributors licensed to sell or distribute wine under the provisions of said article, and shall  
34 also provide for separation or proration of the same and distribution thereof to the respective

35 counties and municipalities for which the same shall be collected. Such rules and regulations shall  
36 provide that all such taxes shall be deposited with the State Treasurer and distributed quarterly  
37 by the Treasurer upon warrants of the Auditor payable to the counties and municipalities.

38 (b) For purposes of this section, terms will have the same meaning as provided in  
39 subsection (b), section seven, article thirteen, chapter eight of this code.

#### **ARTICLE 4. LICENSES.**

##### **§60-4-3b. Winery and farm winery license to manufacture and sell.**

1 (a) *Sales of wine.* — An operator of a winery or farm winery may offer wine produced by  
2 the winery or farm winery for retail sale to customers from the winery or farm winery for  
3 consumption off the premises only. Except for free complimentary samples offered pursuant to  
4 section one, article six of this chapter, customers are prohibited from consuming any wine on the  
5 premises of the winery or farm winery unless such winery or farm winery has obtained a  
6 multicapacity winery or farm winery license: *Provided*, That a licensed winery or farm winery may  
7 offer complimentary samples per this subsection of wine manufactured by that licensed winery or  
8 farm winery for consumption on the premises only on Sundays beginning at 10:00 a.m. in any  
9 county in which the same has been approved as provided in section three-pp, article one, chapter  
10 seven of this code.

11 (b) *Retail sales.* — Every licensed winery or farm winery shall comply with the provisions  
12 of articles three, four and eight of this chapter as applicable to wine retailers, wineries and  
13 suppliers when properly licensed in such capacities.

14 (c) *Payment of taxes and fees.* —

15 (1) The winery or farm winery shall pay all taxes and fees required of licensed wine  
16 retailers and meet applicable licensing provisions as required by this chapter and by rule of the  
17 commissioner.

18 (2) Each winery or farm winery acting as its own supplier shall submit to the Tax  
19 Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in  
20 article eight of this chapter.

21           (3) The five percent wine excise tax, levied pursuant to section nine-d, article three,  
22 chapter sixty of this code or pursuant to section seven, article thirteen, chapter eight of this code,  
23 may not be imposed or collected on purchases of wine in the original sealed package for the  
24 purpose of resale in the original sealed package if the final purchase of such wine is subject to  
25 the excise tax or if the purchase is delivered outside this state.

26           (4) No liter tax shall be collected on wine sold in the original sealed package for the  
27 purpose of resale in the original sealed package if a subsequent sale of such wine is subject to  
28 the liter tax.

29           (5) This section shall not be interpreted to authorize a purchase for resale exemption in  
30 contravention of section nine-a, article fifteen, chapter eleven of this code.

31           (d) *Advertising.* — A winery or farm winery may advertise a particular brand or brands of  
32 wine produced by it and the price of the wine subject to federal requirements or restrictions.

33           (e) *Limitations on licensees.* — A winery or farm winery must maintain separate winery or  
34 farm winery supplier, retailer and direct shipper licenses when acting in one or more of those  
35 capacities and must pay all associated license fees, unless such winery or farm winery holds a  
36 license issued pursuant to the provisions of subdivision (12), subsection (b), section three, article  
37 eight of this chapter. A winery or farm winery, if holding the appropriate licenses or a multicapacity  
38 winery or farm winery license, may act as its own supplier; retailer for off-premises consumption  
39 of its wine as specified in section two, article six of this chapter; private wine restaurant; and direct  
40 shipper for wine produced by the winery or farm winery. All wineries must use a distributor to  
41 distribute and sell their wine in the state, except for farm wineries. No more than one winery or  
42 farm winery license may be issued to a single person or entity and no person may hold both a  
43 winery and a farm winery license.

44           (f) For purposes of this section, terms will have the same meaning as provided in  
45 subsection (b), section seven, article thirteen, chapter eight of this code.



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 90 days from passage.

.....  
*Clerk of the Senate*

.....  
*Clerk of the House of Delegates*

.....  
*President of the Senate*

.....  
*Speaker of the House of Delegates*

\_\_\_\_\_

The within ..... this the.....  
Day of ....., 2017.

.....  
*Governor*