

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 2937**

**2015 Carryover**

(BY DELEGATES PERDUE AND MILEY)

[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 and reenact §60-8-4 of said code; and to amend and reenact §60-3A-17, all  
 3 relating to designating \$5 million per year, for four years, collected from beer, wine, and  
 4 liquor taxes to the Fight Substance Abuse Fund.

*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 §60-8-4 of said code be amended and reenacted; and that §60-3A-17 of said code  
 3 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, in addition to the license taxes provided for in this  
 2 article, a tax of \$5.50 on each barrel of thirty-one gallons and in like ratio on each part barrel of  
 3 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. The brewer manufacturing or producing nonintoxicating beer within this  
 8 state for sale within this state shall pay the barrel tax on such nonintoxicating beer, and, except  
 9 as provided otherwise, the distributor who is the original consignee of nonintoxicating beer  
 10 manufactured or produced outside of this state, or who brings such nonintoxicating beer into this  
 11 state, shall pay the barrel tax on such nonintoxicating beer manufactured or produced outside of  
 12 this state: *Provided*, That the barrel tax imposed by this section shall not apply to nonintoxicating

13 beer manufactured by a brewpub. Beginning on July 1, 2015, and for four fiscal years, the  
14 Legislature shall make available a yearly total of \$5 million to the Fight Substance Abuse Fund  
15 created pursuant to section section six, article nine, chapter sixty-A of this code. The total  
16 amount shall be allocated from the taxes collected pursuant to this section, section four, article  
17 eight, chapter sixty of this code and section seventeen, article three-A , chapter sixty of this code.

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

35 (c) Every brewer or distributor or operator of a brewpub who files a report under subsection  
36 (b) of this section shall file a final monthly report of said sales or purchases or production, in a

37 form and at a time prescribed by the Tax Commissioner, stating actual nonintoxicating beer sales,  
38 purchases, or production and other information which the Tax Commissioner may require, and  
39 shall include a remittance for any barrel tax owed for actual sales or purchases or production  
40 made in excess of the amount estimated for that month.

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

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

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

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

### **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 six-  
4 thousandths cents per liter.

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

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

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

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

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

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

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

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

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