

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 533

BY SENATORS HALL AND MULLINS

[Originating in the Committee on Finance; reported on

March 20, 2017]

1 A BILL 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.

NOTE: The purpose of this bill is to provide that no wine or liquor excise tax will be collected on purchases of wine or intoxicating liquors in the original sealed package for resale, if the final purchase of the wine or intoxicating liquor is subject to the excise tax.

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