

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2894

**FISCAL
NOTE**

BY DELEGATES HILL, MARTIN, ATKINSON AND CAPUTO

[Introduced March 9, 2017; Referred
to the Committee on the Judiciary then Finance.]

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; to amend and reenact §60-4-3b of said code; and to
 3 amend and react §60-8-4 of said code, all relating to the collection of taxes on wine and
 4 intoxicating liquors; providing that no wine or liquor excise tax shall be collected on
 5 purchases of wine or intoxicating liquors in the original sealed package for the purpose of
 6 resale, if the final purchase of such wine or intoxicating liquor is subject to the excise tax;
 7 providing that no liter tax shall be collected on wine sold in the original sealed package for
 8 the purpose of resale, if the subsequent sale of such wine is subject to the liter tax; and
 9 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; that §60-4-3b of said code be
 3 amended and reenacted; and §60-8-4 of said code be amended and reenacted, all to read as
 4 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) Every municipality shall have plenary power and authority to levy and collect a tax upon
 2 all purchases within such municipality of intoxicating liquors from the Alcohol Beverage Control
 3 Commissioner, from any person licensed to sell wine at retail to the public under the provisions
 4 of article eight, chapter sixty of this code, or from distributors licensed to sell or distribute wine
 5 pursuant to said article eight: *Provided*, That no municipality shall have authority to levy or collect
 6 any such tax on the intoxicating liquors sold by or purchased from holders of a license issued
 7 under the provisions of article seven, chapter sixty of this code: *Provided, however, That, no*
 8 *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, chapter sixty of this code. This section shall
13 not be interpreted to authorize a purchase for resale exemption in contravention of section nine-
14 a, article fifteen, chapter eleven of this code. The tax shall be levied upon the purchaser and shall
15 be added to and collected with the price of purchase. The tax shall not exceed five percent of the
16 purchase price.

17 A copy of any ordinance imposing the tax authorized by this section shall be certified by
18 the mayor of the municipality to the West Virginia Alcohol Beverage Control Commissioner and
19 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 eight, and for distribution thereof to the respective municipalities for which the same shall be
25 collected. Such rules and regulations shall provide that all such taxes shall be deposited with the
26 state Treasurer and distributed quarterly by the treasurer upon warrants of the Auditor payable to
27 the municipality.

28 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 article:

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 is prevented from flowing
52 or leaking out of the holder, and which is intended to be the container in which such wine or liquor
53 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 For the purpose of providing financial assistance to and for the use and benefit of the
2 various counties and municipalities of this state, there is hereby levied a tax upon all purchases

3 outside the corporate limits of any municipality of intoxicating liquor from state stores or other
4 agencies of the Alcohol Beverage Control Commissioner, of wine from any person licensed to sell
5 wine at retail under the provisions of article eight, chapter sixty of this code, and of wine from
6 distributors licensed to sell or distribute wine under the provisions of said article eight. The tax
7 shall be five percent of the purchase price and shall be added to and collected with the purchase
8 price by the commissioner, by the person licensed to sell wine at retail, or by the distributor
9 licensed to sell or distribute wine, as the case may be: *Provided*, That no such tax shall be
10 collected on the intoxicating liquors sold by or purchased from holders of a license issued under
11 the provisions of article seven of this chapter: *Provided, however, That, no such tax shall be*
12 *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 All such tax collected within one mile of the corporate limits of any municipality within the
19 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 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 eight, and
34 shall 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 article:

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

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

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

55 and required by law to be affixed to a container of liquor or wine; and
56 (4) "Container" means a bottle, boxed wine box (including the liner, bag or bladder thereof),
57 cask, can, jug or other holder of liquor or wine, which is in immediate physical contact with the
58 liquid contents, and which is the only means by which its liquid contents is prevented from flowing
59 or leaking out of the holder, and which is intended to be the container in which such wine or liquor
60 is to be sold to final consumers.

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 ten o'clock a.m. in
9 any county in which the same has been approved as provided in section three-pp, article one,
10 chapter 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.* — The winery or farm winery shall pay all taxes and fees
15 required of licensed wine retailers and meet applicable licensing provisions as required by this
16 chapter and by rule of the commissioner. Each winery or farm winery acting as its own supplier
17 shall submit to the Tax Commissioner the liter tax for all sales at the winery or farm winery each
18 month, as provided in article eight of this chapter: *Provided, That no wine excise tax shall be*

19 collected on purchases of wine in the original sealed package for the purpose of resale in the
20 original sealed package, if the final purchase of such wine is subject to the excise tax: *Provided,*
21 *however,* That, no liter tax shall be collected on wine sold in the original sealed package for the
22 purpose of resale in the original sealed package, if the a subsequent sale of such wine is subject
23 to the liter tax. This section shall not be interpreted to authorize a purchase for resale exemption
24 in contravention of section nine-a, article fifteen, chapter eleven of this code.

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

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

38 (f) Definitions. — For purposes of this article:

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

44 (2) “Original package” means that container (as defined in this article) into which the

45 manufacturer or bottler of a given liquor or wine first placed a given wine or liquor immediately
46 after it was produced, which is intended by the manufacturer or bottler to be the container in which
47 such wine or liquor is to be sold;

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

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

ARTICLE 8. SALE OF WINES.

§60-8-4. Liter tax.

1 (a) 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: *Provided, That no liter tax shall be collected on wine sold in the original*
5 sealed package for the purpose of resale in the original sealed package, if the a subsequent sale
6 of such wine is subject to the liter tax. This section shall not be interpreted to authorize a purchase
7 for resale exemption in contravention of section nine-a, article fifteen, chapter eleven of this code.

8 Before the sixteenth day of each month thereafter, every supplier, distributor and direct

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

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

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

22 (b) For purposes of this article:

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

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

32 (3) "Seal" means a piece of wax, foil, metal, plastic or paper affixed to a container of liquor
33 or wine, in such a way that the seal must be broken when the container is opened. The purpose
34 of a seal is to show evidence of opening, tampering or alteration of the container. A seal bears

35 some combination of embossed, printed, engraved or impressed emblems, figures, symbols,
36 words, trademarks, stamps, medallions, marks, or letters, for attestation or evidence of
37 authenticity. A seal is typically affixed to a package or container by the manufacturer or bottler of
38 a given wine or liquor. The term "seal" may include a seal provided by or specified by this state,
39 and required by law to be affixed to a container of liquor or wine; and

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

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 the purpose of resale, if the final purchase of the wine or intoxicating liquor is subject to the excise tax. The bill also provides that no liter tax will be collected on wine sold in the original sealed package for the purpose of resale, if the subsequent sale of the wine is subject to the liter tax. The bill also defines terms.

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