

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 147

FISCAL
NOTE

BY SENATOR SYPOLT

[Introduced January 10, 2018; Referred
to the Committee on Agriculture and Rural Development;
and then to the Committee on Finance]

1 A BILL to amend and reenact §8-13-7 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §60-3-9d of said code, all relating to exempting a farm winery from
 3 certain taxes on the selling or distribution of wine when that wine is made on the farm
 4 winery and is sold at retail to the public on the premises of the farm winery.

Be it enacted by the Legislature of West Virginia:

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~~ may levy and collect
 2 a tax upon all purchases within ~~such~~ the municipality: ~~of~~

3 (A) Of intoxicating liquors from the Alcohol Beverage Control Commissioner: ~~from~~

4 (B) From any person licensed to sell wine at retail to the public under the provisions of
 5 §60-8-1 *et seq.* of this code; ~~or from~~

6 (C) From distributors licensed to sell or distribute wine pursuant to said article: ~~Provided,~~

7 ~~That no municipality shall have authority to levy or collect any such tax on the intoxicating liquors~~
 8 ~~sold by or purchased from holders of a license issued under the provisions of article seven,~~
 9 ~~chapter sixty of this code~~ *Provided, however* That no municipality shall have authority to levy or

10 collect any such tax on purchases within such municipality of intoxicating liquors or wine in the
 11 original sealed package for the purpose of resale in the original sealed package if the final
 12 purchase of such intoxicating liquors or wine is subject to the tax imposed under this section,
 13 under §60-3-9d of this code, or under §60-3A-21 of this code. This section shall not be interpreted
 14 to authorize a purchase for resale exemption in contravention of §11-15-9a of this code.

15 (2) The tax shall be levied upon the purchaser and shall be added to and collected with
 16 the price of purchase. The tax shall may not exceed five percent of the purchase price.

17 (3) Notwithstanding subdivision (1) of this subsection:

18 (A) A municipality may not levy or collect the tax on intoxicating liquors sold by or
19 purchased from holders of a license issued under the provisions of §60-7-1 et seq. of this code;
20 and

21 (B) A farm winery that sells or distributes wine made on the farm winery for sale at retail
22 to the public on the premises of the farm winery may only be required to collect the tax on the
23 wine that is sold at retail to the public on the premises of the farm winery, and any other sales or
24 distributions are subject to taxation as provided in subdivision (1) of this subsection.

25 ~~(2) (b)~~ A copy of any ordinance imposing the tax authorized by this section shall be certified
26 by the mayor of the municipality to the West Virginia Alcohol Beverage Control Commissioner
27 and to the Tax Commissioner. The West Virginia Alcohol Beverage Control Commissioner by
28 appropriate rules ~~and regulations~~ shall provide for the collection of ~~such~~ the tax upon all purchases
29 within such municipality of intoxicating liquors from the Alcohol Beverage Control Commissioner,
30 from any person licensed to sell wine at retail pursuant to the provisions of §60-8-1 et seq. of this
31 code, or from distributors licensed to sell or distribute wine pursuant to said article, and for
32 distribution thereof to the respective municipalities for which the same shall be collected. ~~Such~~
33 The rules ~~and regulations~~ shall provide that all ~~such~~ the taxes shall be deposited with the State
34 Treasurer and distributed quarterly by the Treasurer upon warrants of the Auditor payable to the
35 municipality.

36 ~~(3) (c)~~ Every municipality ~~shall have plenary power and authority to~~ may levy and collect
37 a fee from any private club licensee whose premises are situate therein as authorized in §60-7-7
38 of this code.

39 ~~(b) (d)~~ For purposes of this section:

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

44 contents and which is not a “container” as defined in this article;

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

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

57 (4) “Container” means a bottle, boxed wine box (including the liner, bag or bladder thereof),
58 cask, can, jug or other holder of liquor or wine, which is in immediate physical contact with the
59 liquid contents, and which is the only means by which its liquid contents are prevented from
60 flowing or leaking out of the holder, and which is intended to be the container in which such wine
61 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) ~~(4)~~ 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~~

4 (1) Of intoxicating liquor from state stores or other agencies of the Alcohol Beverage
5 Control Commissioner; ~~of~~

6 (2) Of wine from any person licensed to sell wine at retail under the provisions of §60-8-1
7 *et seq.* of this code; and ~~of~~

8 (3) Of wine from distributors licensed to sell or distribute wine under the provisions of ~~said~~
9 that article.

10 (b) Notwithstanding subsection (a) of this section, a farm winery that sells or distributes
11 wine made on the farm winery for sale at retail to the public on the premises of the farm winery
12 may only be required to collect the tax on the wine that is sold at retail to the public on the premises
13 of the farm winery, and any other sales or distributions are subject to taxation as provided in
14 subsection (a) of this subsection.

15 (c) The tax ~~shall be~~ is five percent of the purchase price and shall be added to and
16 collected with the purchase price by the commissioner, by the person licensed to sell wine at
17 retail, or by the distributor licensed to sell or distribute wine, as the case may be: *Provided*, That
18 ~~no such tax shall~~ the tax may not be collected on the intoxicating liquors sold by or purchased
19 from holders of a license issued under the provisions of §60-7-1 *et seq.* of this code: *Provided*,
20 *however*, That no such tax shall be collected on purchases of intoxicating liquors or wine in the
21 original sealed package for the purpose of resale in the original sealed package if the final
22 purchase of such intoxicating liquors or wine is subject to the tax imposed under this section,
23 under §8-13-7 of this code, or under §60-3A-21 of this code. This section shall not be interpreted
24 to authorize a purchase for resale exemption in contravention of §11-15-9a of this code.

25 ~~(2)~~ (d) The tax collected within one mile of the corporate limits of any municipality
26 within the state shall be remitted to ~~such~~ the municipality; all other tax so collected shall be
27 remitted to the county wherein collected: *Provided*, That where the corporate limits of more than
28 one municipality ~~be~~ is within one mile of the place of collection of such tax, all such tax collected
29 shall be divided equally among each of ~~such~~ the municipalities: *Provided, however*, That such

30 mile is measured by the most direct hard surface road or access way usually and customarily
31 used as ingress and egress to the place of tax collection.

32 ~~(3)~~ (e) The West Virginia Alcohol Beverage Control Commissioner by appropriate rules
33 ~~and regulations~~ shall provide for the collection of ~~such~~ the tax upon all purchases outside the
34 corporate limits of any municipality of intoxicating liquor from state stores or other agencies of the
35 Alcohol Beverage Control Commissioner, separation or proration of the ~~same~~ tax and distribution
36 ~~thereof~~ to the respective counties and municipalities for which the ~~same shall be~~ tax is collected.
37 The Tax Commissioner by appropriate rules ~~and regulations~~ shall provide for the collection of
38 ~~such~~ the tax upon all purchases outside the corporate limits of any municipality of wine from any
39 person licensed to sell wine at retail under the provisions of §60-8-1 *et seq.* of this code or from
40 distributors licensed to sell or distribute wine under the provisions of said article, and shall also
41 provide for separation or proration of the same and distribution thereof to the respective counties
42 and municipalities for which the ~~same~~ tax ~~same~~ shall be collected. ~~Such~~ The rules ~~and regulations~~
43 shall provide that ~~all such~~ the taxes shall be deposited with the State Treasurer and distributed
44 quarterly by the Treasurer upon warrants of the Auditor payable to the counties and municipalities.

45 ~~(b)~~ (f) For purposes of this section, terms will have the same meaning as provided in
46 ~~subsection (b) section seven, article thirteen, chapter eight~~ §8-13-7(d) of this code.

NOTE: The purpose of this bill is to exempt a farm winery from certain taxes on the selling or distribution of wine, when that wine is made on the farm winery and is sold at retail to the public on the premises of the farm winery.

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