

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4701

FISCAL
NOTE

BY DELEGATES PERDUE, HAMILTON, HORNBUCKLE,
PUSHKIN, MORGAN, FLEISCHAUER, ROWE, GUTHRIE,
TRECOST AND MOORE

[Introduced February 23, 2016; Referred
to the Committee on Finance.]

1 A BILL to amend and reenact §11-16-13 of the Code of West Virginia, 1931, as amended; to
 2 amend of said code by adding thereto a new section, designated 11-16-27a; to amend
 3 and reenact §60-3A-17 of said code; and to amend and reenact §60-8-4 of said code, all
 4 relating to providing funding of state programs through increased taxes on beer, wine and
 5 liquor; increasing the barrel tax on nonintoxicating beer; increasing the tax on purchases
 6 of liquor; increasing the liter tax for wine; and creating a Special Intoxicant Net Revenue
 7 Account.

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 said code be amended by adding thereto a new section, designated 11-16-27a;
 3 that §60-3A-17 of said code be amended and reenacted; and that §60-8-4 of said code be
 4 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~~ \$11 on each barrel of thirty-one gallons and in like ratio on each part barrel
 3 of 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: Provided, That \$5.50 of the barrel tax shall be paid into the "Special
 8 Intoxicant Net Tax Revenue Account" created pursuant to section twenty-seven-a, article sixteen,
 9 chapter eleven of this code. The brewer manufacturing or producing nonintoxicating beer within
 10 this state for sale within this state shall pay the barrel tax on such nonintoxicating beer, and,

11 except as provided otherwise, the distributor who is the original consignee of nonintoxicating beer
12 manufactured or produced outside of this state, or who brings such nonintoxicating beer into this
13 state, shall pay the barrel tax on such nonintoxicating beer manufactured or produced outside of
14 this state: *Provided, however,* That the barrel tax imposed by this section ~~shall~~ does not apply to
15 nonintoxicating beer manufactured by a brewpub.

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

33 (c) Every brewer or distributor or operator of a brewpub who files a report under subsection
34 (b) of this section shall file a final monthly report of said sales or purchases or production, in a
35 form and at a time prescribed by the Tax Commissioner, stating actual nonintoxicating beer sales,
36 purchases, or production and other information which the Tax Commissioner may require, and

37 shall include a remittance for any barrel tax owed for actual sales or purchases or production
38 made in excess of the amount estimated for that month.

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

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

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

§11-16-27a. Special Intoxicant Net tax Revenue Account.

1 Notwithstanding the provisions of section twenty-seven of this article or other provision of
2 this code to the contrary, \$5.50 the net amount of taxes collected pursuant to subsection (a),
3 section thirteen of this article: the proceeds generated by the increase in prices for wholesale
4 liquor to generate \$6.5 million dollars annually for deposit herein pursuant to section seventeen,
5 article three-a, chapter sixty of the code; and one half of the liter tax on wine as provided in section
6 four, article eight, chapter sixty of the code, all shall be deposited as follows: For the fiscal year
7 beginning on July 1, 2016, the first \$100 million for the fiscal year collected, and the first \$60
8 million each fiscal year thereafter collected, shall be deposited into the special fund established
9 by this section, titled "Special Intoxicant Net tax Revenue Account." Expenditures from the fund

10 shall be for the purposes of this section and are not authorized from collections but are to be
11 made only in accordance with appropriation by the Legislature: *Provided*, That for the fiscal year
12 ending June 30, 2016, expenditures are authorized from collections rather than pursuant to
13 appropriation by the Legislature.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

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 liquor
4 requested by a retail licensee and those permitted to manufacture and sell liquor pursuant to
5 section three, article four of this chapter.

6 (b) Wholesale prices shall be established in order to yield a net profit for the General
7 Revenue Fund of not less than \$6,500,000 annually on an annual volume of business equal to
8 the average for the past three years. The net revenue derived from the sale of alcoholic liquors
9 shall be deposited into the General Revenue Fund in the manner provided in section seventeen,
10 article three of this chapter: *Provided*, That wholesale prices shall be set in a manner to yield an
11 additional net profit, for the "Special Intoxicant Net Tax Revenue Account" created pursuant to
12 section twenty-seven-a, article sixteen, chapter eleven of this code, of not less than \$6.5 million
13 annually on an annual volume of business equal to the average for the past three years.

14 (c) Notwithstanding any provision of this code to the contrary, the commissioner shall
15 specify the maximum wholesale markup percentage which may be applied to the prices paid by
16 the commissioner for all liquor, other than wine, in order to determine the prices at which all liquor,
17 other than wine, will be sold to retail licensees. A retail licensee shall purchase all liquor, other

18 than wine, for resale in this state only from the commissioner, and the provisions of sections
19 twelve and thirteen, article six of this chapter shall not apply to the transportation of the liquor:
20 *Provided*, That a retail licensee shall purchase wine from a wine distributor who is duly licensed
21 under article eight of this chapter. All liquor, other than wine, purchased by retail licensees shall
22 be stored in the state at the retail outlet or outlets operated by the retail licensee: *Provided*,
23 *however*, That the commissioner, in his or her discretion, may upon written request permit a retail
24 licensee to store liquor at a site other than the 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 by
28 the commissioner at least twenty-four hours prior to the shipping of the alcoholic liquors: *Provided*,
29 That if a retail licensee posts with the commissioner an irrevocable letter of credit or bond with
30 surety acceptable to the commissioner from a financial institution acceptable to the commissioner
31 guaranteeing payment of checks, then the commissioner may accept the retail licensee's checks
32 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

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~~ 52.812¢ per liter: Provided, That 26.406¢ of this tax be paid into the "Special
5 Intoxicant Net Tax revenue account" created pursuant to section twenty-seven-a, article sixteen,
6 chapter eleven of this code.

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

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

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

NOTE: The purpose of this bill is to increase taxes on alcoholic beverages to provide additional general revenue for the state budget. The bill increases the barrel tax on nonintoxicating beer, increases the tax on purchases of liquor and wine.

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