

1 **H. B. 2956**

2
3 (By Delegates Miley, Boggs, Manchin, Marcum,
4 Ferro, Reynolds and Ashley)

5
6 [Introduced March 18, 2013; referred to the
7 Committee on the Judiciary.]

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10 A BILL to amend and reenact §11-16-3 and §11-16-6 of the Code of
11 West Virginia, 1931, as amended, all relating to resident
12 brewers and brewpubs; clarifying and amending applicable
13 definitions; clarifying certain requirements and operations
14 relating to distribution and sales at brewpubs; and allowing
15 for the limited sale of nonintoxicating beer and
16 nonintoxicating craft beer by brewpubs for personal
17 consumption off premises and not for resale.

18 *Be it enacted by the Legislature of West Virginia:*

19 That §11-16-3 and §11-16-6 of the Code of West Virginia, 1931,
20 as amended, be amended and reenacted, all to read as follows:

21 **ARTICLE 16. NONINTOXICATING BEER.**

22 **§11-16-3. Definitions.**

23 For the purpose of this article, except where the context
24 clearly requires differently:

25 (1) "Brewer" or "manufacturer" means any person, firm,

1 association, partnership or corporation manufacturing, brewing,
2 mixing, concocting, blending, bottling or otherwise producing or
3 importing or transshipping from a foreign country nonintoxicating
4 beer or nonintoxicating craft beer for sale at wholesale to any
5 licensed distributor.

6 (2) "Brewpub" means a place of manufacture of nonintoxicating
7 beer owned by a resident brewer, subject to federal and state
8 regulations and guidelines, a portion of which premises are
9 designated for retail sales of nonintoxicating beer or
10 nonintoxicating craft beer by the resident brewer owning the
11 brewpub.

12 (3) "Class A retail license" means a retail license permitting
13 the retail sale of liquor at a freestanding liquor retail outlet
14 licensed pursuant to chapter sixty of this code.

15 (4) "Commissioner" means the West Virginia Alcohol Beverage
16 Control Commissioner.

17 (5) "Distributor" means and includes any person jobbing or
18 distributing nonintoxicating beer or nonintoxicating craft beer to
19 retailers at wholesale and whose warehouse and chief place of
20 business shall be within this state.

21 (6) "Growler" means a glass container or jug utilized by a
22 brewpub for only off-premise sales of nonintoxicating beer or
23 nonintoxicating craft beer for personal consumption not on a
24 licensed premise and not for resale. The growler may not be more

1 than a half-gallon in size and must be sealed with a rubber gasket
2 or other secure apparatus approved by the commissioner and placed
3 in bag before a patron leaves the brewpub's licensed premise with
4 a growler.

5 ~~(6)~~ (7) "Freestanding liquor retail outlet" means a retail
6 outlet that sells only liquor, beer, nonintoxicating beer and other
7 alcohol-related products, as defined pursuant to section four,
8 article three-a, chapter sixty of this code.

9 ~~(7)~~ (8) "Nonintoxicating beer" means all natural cereal malt
10 beverages or products of the brewing industry commonly referred to
11 as beer, lager beer, ale and all other mixtures and preparations
12 produced by the brewing industry, including malt coolers and
13 nonintoxicating craft beers with no caffeine infusion or any
14 additives masking or altering the alcohol effect containing at
15 least one half of one percent alcohol by volume, but not more than
16 nine and six-tenths of alcohol by weight, or twelve percent by
17 volume, whichever is greater, all of which are hereby declared to
18 be nonintoxicating and the word "liquor" as used in chapter sixty
19 of this code shall not be construed to include or embrace
20 nonintoxicating beer nor any of the beverages, products, mixtures
21 or preparations included within this definition.

22 ~~(8)~~ (9) "Nonintoxicating beer sampling event" means an event
23 approved by the commissioner for a Class A retail Licensee to hold
24 a nonintoxicating beer sampling authorized pursuant to section

1 eleven-a of this article.

2 ~~(9)~~ (10) "Nonintoxicating beer sampling day" means any days
3 and hours of the week where Class A retail licensees may sell
4 nonintoxicating beer pursuant to sub-section (a)(1), section
5 eighteen of this article, and is approved, in writing, by the
6 commissioner to conduct a nonintoxicating beer sampling event.

7 ~~(10)~~ (11) "Nonintoxicating craft beer" means any beverage
8 obtained by the natural fermentation of barley, malt, hops or any
9 other similar product or substitute and containing not less than
10 one half of one percent by volume and not more than twelve percent
11 alcohol by volume or nine and six-tenths percent alcohol by weight
12 with no caffeine infusion or any additives masking or altering the
13 alcohol effect.

14 ~~(11)~~ (12) "Original container" means the container used by the
15 brewer at the place of manufacturing, bottling or otherwise
16 producing nonintoxicating beer for sale at wholesale.

17 ~~(12)~~ (13) "Person" means and includes an individual, firm,
18 partnership, limited partnership, association or corporation.

19 ~~(13)~~ (14) "Resident brewer" means any ~~person, firm,~~
20 ~~association, partnership, or corporation~~ brewer or manufacturer of
21 not more than 10,000 gallons annually per year of nonintoxicating
22 beer or nonintoxicating craft beer whose principal place of
23 business and manufacture is located within the State of West
24 Virginia.

1 ~~(14)~~ (15) "Retailer" means any person selling, serving, or
 2 otherwise dispensing nonintoxicating beer and all products
 3 regulated by this article, including, but not limited to, any malt
 4 cooler, at his or her established and licensed place of business.

5 ~~(15)~~ (16) "Tax Commissioner" means the Tax Commissioner of the
 6 State of West Virginia or the commissioner's designee.

7 **§11-16-6. License in one capacity only; no connection between**
 8 **different licensees; when brewer may act as**
 9 **distributor; credit and rebates proscribed;**
 10 **brewpub.**

11 (a) No person shall be licensed in more than one capacity
 12 under the terms of this article, and there shall be no connection
 13 whatsoever between any retailer, ~~or~~ distributor, resident brewer or
 14 brewer, and no person shall be interested directly or indirectly
 15 through the ownership of corporate stock, membership in a
 16 partnership, or in any other way in the business of a retailer, if
 17 such person is at the same time interested in the business of a
 18 brewer, resident brewer or distributor. A resident brewer ~~whose~~
 19 ~~place of brewing or manufacture is located within the State of West~~
 20 ~~Virginia~~ may act as distributor ~~of his~~ in a limited capacity for
 21 his or her own product from such resident brewery, place of
 22 manufacture or bottling, but ~~must have a distributor's license for~~
 23 ~~distribution from a place other than the place of brewing or~~

1 ~~manufacture~~ a resident brewer is not permitted to act as a
2 distributor as defined in section three of this article: *Provided,*
3 That nothing in this article may prevent a resident brewer from
4 using the services of licensed distributors as specified in this
5 article. A resident brewer or distributor may sell to a consumer
6 for personal use and not for resale, draught beer in quantities of
7 one-eighth, one-fourth and one-half barrels in the original
8 containers. A resident brewer owning a brewpub may sell
9 nonintoxicating beer or nonintoxicating craft beer produced by the
10 brewpub in a sealed growler, cans or bottles for personal
11 consumption off of a licensed premise and not for resale.

12 (b) It ~~shall be~~ is unlawful for any brewer, resident brewer,
13 manufacturer or distributor to assist any retailer or for any
14 retailer to accept assistance from any brewer, manufacturer or
15 distributor any gifts or loans or forbearance of money or property
16 of any kind, nature or description, or other thing of value or by
17 the giving of any rebates or discounts of any kind whatsoever
18 except as may be permitted by rule, regulation, or order
19 promulgated by the commissioner in accordance with this article.

20 Notwithstanding paragraphs (a) and (b) above, a brewpub may
21 ~~manufacture~~ and offer for retail sale nonintoxicating beer or
22 nonintoxicating craft beer so long as the sale of the
23 nonintoxicating beer or nonintoxicating craft beer is limited to
24 the brewpub premises, except for up to two growlers per customer

1 for personal consumption off of a licensed premises and not for
2 resale.

NOTE: The purpose of this bill is to clarify certain requirements and operations relating to distribution and sales of resident brewers and brewpubs.

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

The Committee on the Judiciary moves to amend the title of the bill as follows:

H. B. 2956 - "A BILL to amend and reenact §11-16-3 and §11-16-6 of the Code of West Virginia, 1931, as amended, all relating to resident brewers and brewpubs; clarifying and amending applicable definitions; clarifying certain requirements and operations relating to distribution and sales at brewpubs; and allowing for the limited sale of nonintoxicating beer and nonintoxicating craft beer by brewpubs for personal consumption off premises and not for resale."