

Senate Bill No. 273

(By Senators Cole (Mr. President) and Kessler,

By Request of the Executive)

[Introduced January 21, 2015; referred to the Committee on Economic Development; and then to

the Committee on the Judiciary.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-16-6, §11-16-9 and §11-16-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-16-6a, all relating to brewer, resident brewer and brewpub licensing and operations; permitting licensed brewers and resident brewers to conduct nonintoxicating beer sampling; permitting licensed brewers and resident brewers to conduct growler sales for off-premises consumption from their brewery premises located in the state; clarifying licensing and operational requirements for brewers, resident brewers and brewpubs; and removing brewpub bonding requirements.

Be it enacted by the Legislature of West Virginia:

That §11-16-6, §11-16-9 and §11-16-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §11-16-6a, all to read as follows:

1 **ARTICLE 16. NONINTOXICATING BEER.**

2 **§11-16-6. License in one capacity only; no connection between different licensees; when**
3 **brewer may act as distributor; credit and rebates proscribed; brewer, resident**
4 **brewer and brewpub requirements.**

5 (a) No person shall be licensed in more than one capacity under the terms of this article, and
6 there shall be no connection whatsoever between any retailer, distributor, resident brewer or brewer,
7 and no person shall be interested directly or indirectly through the ownership of corporate stock,
8 membership in a partnership, or in any other way in the business of a retailer, if such person is at the
9 same time interested in the business of a brewer, resident brewer or distributor. A resident brewer
10 may act as distributor in a limited capacity for his or her own product from such resident brewery,
11 place of manufacture or bottling, but a resident brewer is not permitted to act as a distributor as
12 defined in section three of this article: *Provided*, That nothing in this article may prevent a resident
13 brewer from using the services of licensed distributors as specified in this article. A resident brewer
14 or distributor may sell to a consumer for personal use and not for resale, draught beer in quantities
15 of one-eighth, one-fourth and one-half barrels in the original containers. A resident brewer owning
16 a brewpub may sell nonintoxicating beer or nonintoxicating craft beer produced by the brewpub in
17 a sealed growler, cans or bottles for personal consumption off of a licensed premise and not for
18 resale.

19 (b) It is unlawful for any brewer, resident brewer, manufacturer or distributor to assist any
20 retailer or for any retailer to accept assistance from any brewer, manufacturer or distributor any gifts
21 or loans or forbearance of money or property of any kind, nature or description, or other thing of

1 value or by the giving of any rebates or discounts of any kind whatsoever except as may be permitted
2 by rule, regulation, or order promulgated by the commissioner in accordance with this article.

3 Notwithstanding paragraphs (a) and (b) above, a brewpub may offer for retail sale
4 nonintoxicating beer or nonintoxicating craft beer so long as the sale of the nonintoxicating beer or
5 nonintoxicating craft beer is limited to the brewpub premises, except for up to ~~two~~ four growlers per
6 customer per day for personal consumption off of a licensed premises and not for resale, and further
7 a brewer or resident brewer who meets the requirements in section six-c of this article may offer for
8 retail sale up to four growlers of nonintoxicating beer or nonintoxicating craft beer per customer per
9 day for personal consumption off of a licensed premises and not for resale.

10 **§11-16-6a. Brewer and resident brewer license to manufacture, sell and provide**
11 **complimentary samples.**

12 (a) *Sales of nonintoxicating beer.* -- A licensed brewer or resident brewer with its principal
13 place of business and manufacture located in the State of West Virginia may offer only
14 nonintoxicating beer manufactured by the brewer or resident brewer at its principal place of business
15 and manufacture located in the State of West Virginia for retail sale to customers from the brewer
16 or resident brewer for consumption off the licensed premises only in the form of kegs, bottles, cans
17 or growlers: *Provided,* That a brewer or resident brewer with its principal place of business and
18 manufacture located in the State of West Virginia may offer complimentary samples no greater than
19 two ounces per patron per each nonintoxicating beer product brewed at the brewer or resident
20 brewer's principal place of business and manufacture located in the State of West Virginia, and in
21 any event, such sampling shall not exceed ten complimentary two ounce samples per any one patron

1 per day. Brewers or resident brewers who qualify for providing complimentary samples shall
2 provide complimentary food items for any patron consuming their nonintoxicating beer and shall
3 also verify using proper identification that each patron sampling nonintoxicating beer is twenty-one
4 years of age or over and that the patron is not visibly intoxicated. A brewer or resident brewer may
5 not sell, give or furnish nonintoxicating beer for consumption on the premises of the principal place
6 of business and manufacture located in the State of West Virginia except for the limited purpose of
7 complimentary samples permitted in this section.

8 (b) *Retail sales.* -- Every licensed brewer or resident brewer shall comply with the provisions
9 of this article as applicable to nonintoxicating beer retailers when conducting sales of
10 nonintoxicating beer and shall be subject to all applicable penalties in this article.

11 (c) *Payment of taxes and fees.* -- A licensed brewer or resident brewer operating under
12 subsection (a) shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in
13 addition to any other taxes and fees required, and meet applicable licensing provisions as required
14 by this chapter and by rule of the commissioner.

15 (d) *Advertising.* -- A licensed brewer or resident brewer operating under subsection (a) may
16 advertise a particular brand or brands of nonintoxicating beer produced by it, and the price of the
17 nonintoxicating beer subject to state and federal requirements or restrictions. The advertisement
18 may not encourage intemperance.

19 (e) *Limitations on licensees.* -- No licensed resident brewer may produce more than
20 twenty-five thousand barrels per calendar year at the resident brewer's principal place of business
21 and manufacture located in the State of West Virginia. No more than one brewer or resident brewer

1 license may be issued to a single person or entity and no person may hold both a brewer and a
2 resident brewer license.

3 **§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of**
4 **nonintoxicating beer permitted; distributors; brewers; brewpubs.**

5 There is levied and imposed an annual license tax upon all dealers in and of nonintoxicating
6 beer as defined by this article, which license period begins on July 1, of each year and ends on June
7 30 of the following year, and, if granted for a less period, it shall be computed semiannually in
8 proportion to the remainder of the fiscal year as follows:

9 (1) Retail dealers shall be divided into two classes, Class A and Class B. In the case of a
10 Class A retail dealer the license fee is \$150 for each place of business; the license fee for social,
11 fraternal or private clubs not operating for profit, and having been in continuous operation for two
12 years or more immediately preceding the date of application, is \$150: *Provided*, That railroads
13 operating in this state may dispense nonintoxicating beer upon payment of an annual license tax of
14 \$10 for each dining, club or buffet car in which the beer is dispensed.

15 Class A licenses issued for railroad dining, club or buffet cars authorize the licensee to sell
16 nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other
17 Class A licenses authorize the licensee to sell nonintoxicating beer at retail for consumption on or
18 off the licensed premises.

19 In the case of a Class B retailer, the fee for a Class B license authorizing the sale of both
20 chilled and unchilled beer is \$150 for each place of business. A Class B license authorizes the
21 licensee to sell nonintoxicating beer at retail in bottles, cans or other sealed containers only, and only

1 for consumption off the licensed premises. A Class B retailer may sell to a consumer, for personal
2 use and not for resale, draught beer in quantities of one-eighth, one-fourth and one-half barrels in the
3 original containers.

4 A Class B license may be issued only to the proprietor or owner of a grocery store. For the
5 purpose of this article the term "grocery store" means and includes any retail establishment
6 commonly known as a grocery store or delicatessen and caterer or party supply store, where food or
7 food products are sold for consumption off the premises, and means a separate and segregated
8 portion of any other retail store which is dedicated solely to the sale of food, food products and
9 supplies for the table for consumption off the premises. The commissioner may propose for
10 legislative approval legislative rules pursuant to chapter twenty-nine-a of this code necessary to carry
11 this provision into effect. Caterers or party supply stores are required to purchase the appropriate
12 licenses from the alcohol beverage control administration.

13 (2) ~~In the case of~~ For distributors, the license fee is \$1,000 for each place of business.

14 (3) ~~In the case of~~ For a resident brewer or a brewer with its principal place of business located
15 in this state and who produces: (I) 12,500 barrels or less of nonintoxicating beer or nonintoxicating
16 craft beer the license fee is \$1,500 for each place of manufacture; (ii) 12,501 barrels and up to 25,000
17 barrels of nonintoxicating beer or nonintoxicating craft beer the license fee is \$1,000 for each place
18 of manufacture; and (iii) more than 25,001 barrels of nonintoxicating beer or nonintoxicating craft
19 beer the license fee is \$1,500 for each place of manufacture. Brewers whose principal place of
20 business or manufacture is not located in this state shall pay a licensee fee of \$1,500 and are
21 exempted from the reporting requirements of subdivision (5) of this section.

1 (4) In the case of a brewpub, the license fee is ~~\$1,000~~ \$500 for each place of manufacture
2 where a brewer or resident brewer's brewpub is located.

3 (5) Upon filing an application or a renewal application and in order to determine a brewer
4 or resident brewer's license fee per subdivision (3) of this section, a brewer or resident brewer shall
5 provide the commissioner with an estimate of the number of nonintoxicating beer or nonintoxicating
6 craft beer barrels and gallons it will produce during the year based upon the production capacity of
7 the brewer's manufacturing facilities and prior year's production and sales volume of
8 nonintoxicating beer or nonintoxicating craft beer on a form provided by the commissioner.
9 Furthermore, every brewer or resident brewer shall file a final report on a form provided by the
10 commissioner as of June 30 of each year stating the actual volume of nonintoxicating beer or
11 nonintoxicating craft beer in barrels and gallons produced at its principal place of business and
12 manufacture during the prior year. In the instance where a brewer or resident brewer's actual
13 nonintoxicating beer or nonintoxicating craft beer production exceeded its estimated nonintoxicating
14 beer or nonintoxicating craft beer production amounts resulting in a higher license fee based on
15 subdivision (3) of this section, then a brewer or resident brewer shall remit the additional balance
16 owed for the license fee to the commissioner. Any brewer or resident brewer choosing not to file
17 or failing to file the reports required by this subdivision and who are not otherwise exempt from such
18 reporting requirement pursuant to subdivision (3) of this section shall pay a license fee of \$1,500 for
19 each place of manufacture.

20 **§11-16-12. Bond of brewer, distributor, and Class A retail dealer; action on bond of retail**
21 **dealer upon revocation of license; duty of prosecuting attorney.**

1 (a) In addition to furnishing the information required by this article, each brewer or
2 distributor applying for a license under this article shall furnish, as prerequisite to a license, a bond
3 with some solvent surety company as surety, to be approved by the commissioner, payable to the
4 State of West Virginia, conditioned for the payment of any and all additional taxes accruing during
5 the period of such license, and conditioned further for the faithful observance of the provisions of
6 this article, the rules, regulations and orders promulgated pursuant thereto and of any other laws of
7 the State of West Virginia generally relating to the sale, transportation, storage and distribution of
8 nonintoxicating beer, which said bonds shall be forfeited to the state upon the revocation of the
9 license of any such brewer or distributor. The amount of such bond, in the case of a resident brewer
10 ~~or brewpub~~, shall be not less than \$5,000, nor more than \$10,000, and in the case of a distributor,
11 not less than \$2,000, nor more than \$5,000 for each place of business licensed and conducted within
12 the state, the amount of such bond, between the minimum and maximum amounts, to be determined
13 in the discretion of the commissioner. There shall be no bond for a brewpub license as the license
14 privilege itself secures the payment of taxes and is subject to suspension and revocation for failure
15 to pay said taxes. In the case of brewers shipping nonintoxicating beer into the state, any brewer
16 must also furnish a bond in a penalty of not less than \$5,00 nor more than \$25,000 conditioned as
17 hereinabove in this subsection provided and any bond furnished pursuant hereto shall be forfeited
18 to the state in the full amount of said bond upon revocation of license of any such brewer or
19 distributor. Such money received by the state shall be credited to the state fund, general revenue.

20 (b) Each Class A retail dealer, in addition to furnishing the information required by this
21 article, shall furnish as prerequisite to obtaining a license, a bond with some solvent surety company

1 as surety, to be approved by the commissioner, payable to the State of West Virginia, in the amount
2 not less than \$500, nor more than \$1000, within the discretion of the commissioner. All such bonds
3 shall be conditioned for the faithful observance of the provisions of this article, the rules, regulations
4 and orders promulgated pursuant thereto and of any other laws of the State of West Virginia
5 generally relating to the distribution, sale and dispensing of nonintoxicating beer, and shall be
6 forfeited to the state in the full amount of said bond upon the revocation of the license of any such
7 retail dealer. Such money received by the state shall be credited to the state fund, general revenue.

8 (c) Upon the revocation of the license of any Class A retail dealer by the commissioner or by
9 any court of competent jurisdiction, the commissioner or the clerk of said court shall notify the
10 prosecuting attorney of the county wherein such retail dealer's place of business is located, or the
11 prosecuting attorney of the county wherein the licensee resides, of such revocation, and, upon receipt
12 of said notice, it shall be the duty of such prosecuting attorney forthwith to institute appropriate
13 proceedings for the collection of the full amount of said bond. Upon request of such prosecuting
14 attorney, the commissioner shall deliver the bond to him. Willful refusal without just cause therefor
15 by the prosecuting attorney to perform said duty hereby imposed shall subject him to removal from
16 office by the circuit court of the county for which said prosecuting attorney was elected upon proper
17 proceedings and proof in the manner provided by law.

NOTE: The purpose of this bill is to clarify licensing and operational requirements for brewers, resident brewers and brewpubs by: (1) permitting licensed brewers and resident brewers to conduct nonintoxicating beer sampling on their brewery premises within the State of West Virginia; (2) permitting a resident brewer to conduct growler sales for off-premises consumption from its brewery premises within the current resident brewer license for no additional expense, as is similarly permitted for distilleries, mini-distilleries, wineries and farm wineries (W. Va. Code §60-4-3); (3)

having a sliding scale of licensure fees based on production volume and sales; (4) requiring production volume and sales reports to the commissioner; and (5) terminating the bond requirement for a brewpub license since the license may be suspended or revoked for failure to pay taxes.

In §11-16-6, §11-16-9, and §11-16-12, strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

Section 11-16-6a is new; therefore, strike-throughs and underscoring have been omitted.