

Senate Bill No. 297

(By Senators Walters and Palumbo)

[Introduced January 23, 2015; referred to the Committee on Economic Development; and then to the Committee on the Judiciary.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-16-3, §11-16-6 and §11-16-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-16-6b; all relating generally to nonintoxicating beer; changing the amount of nonintoxicating draught beer that may be sold to a consumer in certain instances; removing limitation on how much nonintoxicating beer may be sold to consumers for consumption off premises; permitting licensees to sell growlers; setting forth conditions that must be met for those sales; permitting certain licensees to obtain newly established class of sales endorsement; establishing cost; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §11-16-3, §11-16-6 and §11-16-9 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 §11-16-6b, all to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

1 **§11-16-3. Definitions.**

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

3 (1) "Brand" means a nonintoxicating beer product manufactured, brewed, mixed, concocted,
4 blended, bottled or otherwise produced, or imported or transhipped by a brewer or manufacturer, the
5 labels of which have been registered and approved by the commissioner that is being offered for sale
6 or sold in West Virginia by a distributor who has been appointed in a valid franchise agreement or
7 a valid amendment thereto.

8 (2) "Brewer" or "manufacturer" means any person manufacturing, otherwise producing or
9 importing or transshipping nonintoxicating beer or nonintoxicating craft beer for sale at wholesale
10 to any licensed distributor. Brewer or manufacturer may be used interchangeably throughout this
11 article. A brewer may obtain only one brewer's license for its nonintoxicating beer or
12 nonintoxicating craft beer.

13 (3) "Brewpub" means a place of manufacture of nonintoxicating beer owned by a resident
14 brewer, subject to federal and state regulations and guidelines, a portion of which premises are
15 designated for retail sales of nonintoxicating beer or nonintoxicating craft beer by the resident brewer
16 owning the brewpub.

17 (4) "Class A retail license" means a retail license permitting the retail sale of liquor at a
18 freestanding liquor retail outlet licensed pursuant to chapter sixty of this code.

19 "Class G retail license endorsement" means an endorsement to a preexisting Class A, Class
20 B, or private club license, permitting the retailer to sell growlers to consumers.

21 (5) "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner.

22 "Consumer" means any natural person, otherwise authorized to purchase, possess, or

1 consume alcoholic beverages under this code, who purchases or possesses nonintoxicating beer or
2 nonintoxicating craft beer for personal or family use and not for resale.

3 (6) "Distributor" means and includes any person jobbing or distributing nonintoxicating beer
4 or nonintoxicating craft beer to retailers at wholesale and whose warehouse and chief place of
5 business shall be within this state. For purposes of a distributor only, the term "person" means and
6 includes an individual, firm, trust, partnership, limited partnership, limited liability company,
7 association or corporation. Any trust licensed as a distributor or any trust that is an owner of a
8 distributor licensee, and the trustee or other persons in active control of the activities of the trust
9 relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the
10 distributor license that are unlawful acts or violations of article eleven of this chapter
11 notwithstanding the liability of trustees in article ten, chapter forty-four-d of this code.

12 (7) "Franchise agreement" means the written agreement between a brewer and a distributor
13 that is identical as to terms and conditions between the brewer and all its distributors, which
14 agreement has been approved by the commissioner. The franchise agreement binds the parties so that
15 a distributor, appointed by a brewer, may distribute all of the brewer's nonintoxicating beer products,
16 brands or family of brands imported and offered for sale in West Virginia, including, but not limited
17 to, existing brands, line extensions and new brands all in the brewer's assigned territory for the
18 distributor. All brands and line extensions being imported or offered for sale in West Virginia must
19 be listed by the brewer in the franchise agreement or a written amendment to the franchise
20 agreement. A franchise agreement may be amended by mutual written agreement of the parties as
21 approved by the commissioner with identical terms and conditions for a brewer and all of its
22 distributors. Any approved amendment to the franchise agreement becomes a part of the franchise

1 agreement. A brewer and a distributor may mutually agree in writing to cancel a franchise agreement.
2 A distributor terminated by a brewer as provided in this article and the promulgated rules no longer
3 has a valid franchise agreement. If a brewer has reached an agreement to cancel a distributor or has
4 terminated a distributor, then a brewer may appoint a successor distributor who accedes to all the
5 rights of the cancelled or terminated distributor.

6 (8) "Franchise distributor network" means the distributors who have entered into a binding
7 written franchise agreement, identical as to terms and conditions, to distribute nonintoxicating beer
8 products, brands and line extensions in an assigned territory for a brewer. A brewer may only have
9 one franchise distributor network: *Provided*, That a brewer that has acquired the manufacturing,
10 bottling or other production rights for the sale of nonintoxicating beer at wholesale from a selling
11 brewer as specified in subdivision (2), subsection (a), section twenty-one of this article shall continue
12 to maintain and be bound by the selling brewer's separate franchise distributor's network for any of
13 its existing brands, line extensions and new brands.

14 (9) "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, beer,
15 nonintoxicating beer and other alcohol-related products, as defined pursuant to section four, article
16 three-a, chapter sixty of this code.

17 (10) "Growler" means a glass ceramic or metal container or jug, capable of being securely
18 sealed, ~~utilized~~ used by a ~~brewpub~~ retailer for purposes of off-premise sales of nonintoxicating beer
19 or nonintoxicating craft beer for personal consumption not on a licensed premise and not for resale.

20 (11) "Line extension" means any nonintoxicating beer product that is an extension of brand
21 or family of brands that is labeled, branded, advertised, marketed, promoted or offered for sale with
22 the intent or purpose of being manufactured, imported, associated, contracted, affiliated or otherwise

1 related to a brewer's existing brand through the use of a brewer, its subsidiaries, parent entities,
2 contracted entities, affiliated entities or other related entities'. In determining whether a
3 nonintoxicating beer product is a line extension, the commissioner may consider, but is not limited
4 to, the following factors: name or partial name; trade name or partial trade name; logos; copyrights;
5 trademarks or trade design; product codes; advertising promotion or pricing.

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

14 (13) "Nonintoxicating beer sampling event" means an event approved by the commissioner
15 for a Class A retail Licensee to hold a nonintoxicating beer sampling authorized pursuant to section
16 eleven-a of this article.

17 ~~(14)~~ "Nonintoxicating beer sampling day" means any days and hours of the week where Class
18 A retail licensees may sell nonintoxicating beer pursuant to subdivision (1), subsection (a), section
19 eighteen of this article, and is approved, in writing, by the commissioner to conduct a
20 nonintoxicating beer sampling event.

21 ~~(15)~~ "Nonintoxicating craft beer" means any beverage obtained by the natural fermentation
22 of barley, malt, hops or any other similar product or substitute and containing not less than one half

1 of one percent by volume and not more than twelve percent alcohol by volume or nine and six-tenths
2 percent alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol
3 effect.

4 (16) "Original container" means the container used by the brewer at the place of
5 manufacturing, bottling or otherwise producing nonintoxicating beer for sale at wholesale.

6 (17) "Person" means and includes an individual, firm, partnership, limited partnership,
7 limited liability company, association or corporation.

8 (18) "Resident brewer" means any brewer or manufacturer of nonintoxicating beer or
9 nonintoxicating craft beer whose principal place of business and manufacture is located in the State
10 of West Virginia and which does not brew or manufacture more than twenty-five thousand barrels
11 of nonintoxicating beer or nonintoxicating craft beer annually, and does not self-distribute more than
12 ten thousand barrels thereof in the State of West Virginia annually.

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

16 (20) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or the
17 commissioner's designee.

18 **§11-16-6. License in one capacity only; no connection between different licensees; when**
19 **brewer may act as distributor; credit and rebates proscribed; brewpub.**

20 (a) No person ~~shall~~ may be licensed in more than one capacity under the terms of this article,
21 and there ~~shall~~ may be no connection whatsoever between any retailer, distributor, resident brewer
22 or brewer, and no person ~~shall~~ may be interested directly or indirectly through the ownership of

1 corporate stock, membership in a partnership, or in any other way in the business of a retailer, if such
2 person is at the same time interested in the business of a brewer, resident brewer or distributor. A
3 resident brewer may act as distributor in a limited capacity for his or her own product from such
4 resident brewery, place of manufacture or bottling, but a resident brewer is not permitted to act as
5 a distributor as defined in section three of this article: *Provided*, That nothing in this article ~~may~~
6 prevents a resident brewer from using the services of licensed distributors as specified in this article.
7 A resident brewer or distributor may sell to a consumer for personal use and not for resale, draught
8 beer in quantities ~~of one-eighth, one-fourth and one-half barrels~~ not to exceed one-half barrel in the
9 original containers. A resident brewer owning a brewpub may sell nonintoxicating beer or
10 nonintoxicating craft beer produced by the brewpub in a sealed growler, cans or bottles for personal
11 consumption off of a licensed premise and not for resale.

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

17 (c) ~~Notwithstanding paragraphs (a) and (b) above~~ subsections (a) and (b) of this section, a
18 brewpub may offer for retail sale nonintoxicating beer or nonintoxicating craft beer. ~~so long as the~~
19 ~~sale of the nonintoxicating beer or nonintoxicating craft beer is limited to the brewpub premises,~~
20 ~~except for up to two growlers per customer for personal consumption off of a licensed premises and~~
21 ~~not for resale.~~

22 **§11-16-6b. Growlers.**

1 A licensee may sell growlers to consumers, subject to the following:

2 (1) A Class A or private club licensee otherwise authorized to sell draught nonintoxicating
3 beer and nonintoxicating craft beer may sell growlers to consumers for off premises use and not for
4 resale if the licensee has also obtained a Class G license endorsement.

5 (2) A Class B licensee may sell growlers to consumers for off premises use and not for resale
6 if the licensee has also obtained a Class G license endorsement, and:

7 (A) Has a sanitary and secure system in place for dispensing draught nonintoxicating beer
8 and nonintoxicating craft beer;

9 (B) The draught system is available only to the employees and agents of the licensee; and

10 (C) Only the employees and agents of the licensee dispense the draught nonintoxicating beer
11 and nonintoxicating craft beer into the growler.

12 (3) A brewpub may sell growlers to consumers and no additional license endorsement is
13 required.

14 (4) A growler sold to a consumer under this article shall be clean and resealable and shall
15 be labeled with the name and alcohol content of the product dispensed, as well as the name, address,
16 and license number of the retailer. A growler must be properly sealed before leaving the licensed
17 premises.

18 **§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of**
19 **nonintoxicating beer permitted; distributors; brewers; brewpubs.**

20 There is levied and imposed an annual license tax upon all dealers in and of nonintoxicating
21 beer as defined by this article, which license period begins on July 1, of each year and ends on June
22 30 of the following year, and, if granted for a less period, it shall be computed semiannually in

1 proportion to the remainder of the fiscal year as follows:

2 (1) Retail dealers shall be divided into two classes, Class A and Class B. In the case of a
3 Class A retail dealer the license fee is \$150 for each place of business; the license fee for social,
4 fraternal or private clubs not operating for profit, and having been in continuous operation for two
5 years or more immediately preceding the date of application, is \$150: *Provided*, That railroads
6 operating in this state may dispense nonintoxicating beer upon payment of an annual license tax of
7 \$10 for each dining, club or buffet car in which the beer is dispensed.

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

12 In the case of a Class B retailer, the fee for a Class B license authorizing the sale of both
13 chilled and unchilled beer is \$150 for each place of business. A Class B license authorizes the
14 licensee to sell nonintoxicating beer at retail in bottles, cans or other sealed containers only, and only
15 for consumption off the licensed premises. A Class B retailer may sell to a consumer, for personal
16 use and not for resale, draught beer in quantities of one-eighth, one-fourth and one-half barrels in the
17 original containers.

18 A Class B license may be issued only to the proprietor or owner of a grocery store. For the
19 purpose of this article the term "grocery store" means and includes any retail establishment
20 commonly known as a grocery store or delicatessen and caterer or party supply store, where food or
21 food products are sold for consumption off the premises, and means a separate and segregated
22 portion of any other retail store which is dedicated solely to the sale of food, food products and

1 supplies for the table for consumption off the premises. The commissioner may propose for
2 legislative approval legislative rules pursuant to chapter twenty-nine-a of this code necessary to carry
3 this provision into effect. Caterers or party supply stores are required to purchase the appropriate
4 licenses from the alcohol beverage control administration.

5 Any holder of a Class A or Class B license may obtain a Class G license endorsement. The
6 fee for a Class G license endorsement is \$60 for each place of business. A Class G license
7 endorsement permits the licensee to sell growlers to the public, subject to the provisions of this
8 article.

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

10 (3) In the case of a brewer with its principal place of business located in this state, the license
11 fee is \$1,500 for each place of manufacture.

12 (4) In the case of a brewpub, the license fee is \$1,000 for each place of manufacture.

NOTE: The purpose of this bill is to change the amount of nonintoxicating draught beer that may be sold to a consumer in certain instances. The bill removes the limitation on how much nonintoxicating beer may be sold to consumers for consumption off the premises. The bill permits licensees to sell growlers. The bill sets forth the conditions that must be met for those sales. The bill permits certain licensees to obtain a newly established class of sales endorsement. The bill establishes the cost. The bill defines terms.

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

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