

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Introduced**

## **Senate Bill 478**

BY SENATORS WALTERS AND PALUMBO

[Introduced February 2, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §11-16-6b of the Code of West Virginia, 1931, as amended, relating  
2 to authorizing licensees authorized to sell growlers of nonintoxicating beer to offer  
3 complimentary samples to patrons from their licensed premises.

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

1 That §11-16-6b of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

**ARTICLE 16. NONINTOXICATING BEER.**

**§11-16-6b. Brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail  
licensee and Class B retail licensee=s authority to sell growlers.**

1 (a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to  
2 regulate, control and support the brewing, manufacturing, distribution, sale, consumption,  
3 transportation and storage of nonintoxicating beer and nonintoxicating craft beer and its industry  
4 in this state in order to protect the public health, welfare and safety of the citizens of this state and  
5 promote hospitality and tourism. Therefore, this section authorizes a licensed brewpub, Class A  
6 retail dealer, Class B retail dealer, private club, Class A retail licensee or Class B retail licensee  
7 to have certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating  
8 craft beer manufactured in this state for the benefit of the citizens of this state, the state=s growing  
9 brewing industry and the state=s hospitality and tourism industry, all of which are vital components  
10 for the state=s economy.

11 (b) *Sales of nonintoxicating beer.* — A licensed brewpub, Class A retail dealer, Class B  
12 retail dealer, private club, Class A retail licensee or Class B retail licensee who pays the fee in  
13 subsection (i) of this section and meets the requirements of this section may offer nonintoxicating  
14 beer or nonintoxicating craft beer for retail sale to patrons from their licensed premises in a growler  
15 for personal consumption only off of the licensed premises and not for resale. Prior to the sale,  
16 the licensee shall verify, using proper identification, that any patron purchasing nonintoxicating

17 beer or nonintoxicating craft beer is twenty-one years of age or over and that the patron is not  
18 visibly intoxicated. A licensee authorized under this section may not sell, give or furnish alcoholic  
19 liquors, including wine, for consumption off of its licensed premises, unless it is a private club  
20 licensed to sell sealed wine for consumption off of the licensed premises and meets the  
21 requirements set out in subdivisions (j) and (l), section three, article eight, chapter sixty of this  
22 code for the sale of wine, not liquor.

23 (c) *Retail sales.* — Every licensee authorized under this section shall comply with all the  
24 provisions of this article as applicable to nonintoxicating beer retailers when conducting sales of  
25 nonintoxicating beer or nonintoxicating craft beer and shall be subject to all applicable  
26 requirements and penalties in this article.

27 (d) *Payment of taxes and fees.* — A licensee authorized under this section shall pay all  
28 taxes and fees required of licensed nonintoxicating beer retailers, in addition to any other taxes  
29 and fees required, and meet applicable licensing provisions as required by this chapter and by  
30 rule of the commissioner.

31 (e) *Advertising.* — A licensee authorized under this section may advertise a particular  
32 brand or brands of nonintoxicating beer or nonintoxicating craft beer and the price of the  
33 nonintoxicating beer or nonintoxicating craft beer subject to state and federal requirements or  
34 restrictions. The advertisement may not encourage intemperance.

35 (f) *Growler requirements.* — A licensee authorized under this section must fill a growler  
36 and patrons are not permitted to access the secure area or fill a growler. A licensee authorized  
37 under this section must sanitize, fill, securely seal and label any growler prior to its sale. A licensee  
38 authorized under this section may only offer for retail sale up to two 64-ounce, or four 32-ounce,  
39 growlers of nonintoxicating beer or nonintoxicating craft beer per customer per day for personal  
40 consumption off of the licensed premises and not for resale. A licensee under this section may  
41 refill a growler subject to the requirements of this section. A licensee shall visually inspect any  
42 growler before filling or refilling it. A licensee may not fill or refill any growler that appears to be

43 cracked, broken, unsafe or otherwise unfit to serve as a sealed beverage container.

44 (g) *Growler labeling.* — A licensee authorized under this section selling growlers shall affix  
45 a conspicuous label on all sold and securely sealed growlers listing the name of the licensee  
46 selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer in the  
47 growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating craft beer in  
48 the growler and the date the growler was filled or refilled and, further, all labeling on the growler  
49 shall be consistent with all federal labeling and warning requirements.

50 (h) *Growler sanitation.* — A licensed brewer or resident brewer authorized under this  
51 section shall clean and sanitize all growlers he or she fills or refills in accordance with all state  
52 and county health requirements prior to its sealing. In addition, the licensed brewer or resident  
53 brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap  
54 lines, pipe lines, barrel tubes and any other related equipment used to fill or refill growlers. Failure  
55 to comply with this subsection may result in penalties under section twenty-three of this article.

56 (i) *Complimentary samples.* — A licensee authorized under this section may offer  
57 complimentary samples of nonintoxicating beer or nonintoxicating craft beer. The complimentary  
58 samples may be no greater than two ounces per sample per patron and a sampling may not  
59 exceed three complimentary two ounce samples per patron per day. Prior to any sampling, the  
60 licensee shall verify, using proper identification, that the patron sampling is twenty-one years of  
61 age or over and that the patron is not visibly intoxicated.

62 (j) *Fee.* — Commencing July 1, 2015, and by every July 1 thereafter, there is an annual  
63 \$100 nonrefundable fee for a licensee, except for a licensed brewpub, to sell growlers as provided  
64 by this section. The licensee must be in good standing with the state at the time of paying the fee.

65 (k) *Limitations on licensees.* — A licensee under this section may only sell growlers  
66 during the hours of operation set forth in subdivision (1), subsection (a), section eighteen of this  
67 article. Any licensee licensed under this section must maintain a secure area for the sale of  
68 nonintoxicating beer or nonintoxicating craft beer in a growler. The secure area must only be

69 accessible by the licensee. Any licensee licensed under this section shall be subject to the  
70 applicable penalties under section twenty-three of this article for violations of this section.

71 ~~(k)~~ (l) *Nonapplicability of certain statutes.* — Notwithstanding any other provision of this  
72 code to the contrary, licensees under this section are permitted to break the seal of the original  
73 container for the limited purpose of filling a growler as provided in this section. Any unauthorized  
74 sale of nonintoxicating beer or nonintoxicating craft beer or any consumption not permitted on the  
75 licensee=s licensed premises is subject to penalties under this article.

76 ~~(l)~~ (m) *Rules.* — The commissioner ~~is authorized to~~ may propose rules for legislative  
77 approval, pursuant to article three, chapter twenty-nine-a of this code, to implement this section.

NOTE: The purpose of this bill is to authorize licensee's authorized to sell growlers to offer complimentary samples of nonintoxicating beers to patrons from their licensed premises.

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

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#### JUDICIARY COMMITTEE AMENDMENTS

On page one, section six-b, line thirteen, by striking out "(i)" and inserting in lieu thereof "(j)".;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 478**—A Bill to amend and reenact §11-16-6b of the Code of West Virginia, 1931, as amended, relating to authorizing licensees authorized to sell growlers of nonintoxicating beer to offer complimentary samples to patrons from their licensed premises; permitting licensees to offer complimentary samples of nonintoxicating beer or nonintoxicating craft beer to patrons; limiting size of samples; limiting number of samples; requiring licensee to verify patron's age using proper identification prior to sampling; and requiring licensee to verify prior to sampling that patron is not visibly intoxicated.