

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2563

BY DELEGATES WALTERS, HOWELL, AMBLER AND

HAMRICK

[Introduced February 20, 2017; Referred
to the Committee on Small Business,
Entrepreneurship and Economic Development then
the Judiciary.]

1 A BILL to amend and reenact §11-16-6b of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §11-16-11a of said code, all relating to permitting licensed brewpubs,
 3 Class A retail dealers, Class B retail dealers, private clubs, Class A retail licensees and
 4 Class B retail licensees to serve complimentary samples of nonintoxicating beer or
 5 nonintoxicating craft beer manufactured in the State of West Virginia; and removing
 6 restrictions on Class A retail licensees' ability to serve complimentary nonintoxicating beer
 7 samples to customers.

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; and that §11-16-11a of said code be amended and reenacted, all 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 and provide
 complimentary samples.**

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) Complimentary samples. – Notwithstanding any provision of this code to the contrary,
24 a licensed brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail
25 licensee or Class B retail licensee may offer complimentary samples of nonintoxicating beer or
26 nonintoxicating craft beer manufactured in the State of West Virginia. The complimentary samples
27 may be no greater than two ounces per sample per patron, and a sampling shall not exceed ten
28 complimentary two-ounce samples per patron per day. Prior to the sampling, the licensed
29 brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee or Class
30 B retail licensee shall verify, using proper identification, that any patron sampling nonintoxicating
31 beer or nonintoxicating craft beer is twenty-one years of age or over and that the patron is not
32 visibly intoxicated.

33 ~~(e)~~ (d) Retail sales. -- Every licensee authorized under this section shall comply with all
34 the provisions of this article as applicable to nonintoxicating beer retailers when conducting sales
35 of nonintoxicating beer or nonintoxicating craft beer and shall be subject to all applicable
36 requirements and penalties in this article.

37 ~~(d)~~ (e) Payment of taxes and fees. -- A licensee authorized under this section shall pay all
38 taxes and fees required of licensed nonintoxicating beer retailers, in addition to any other taxes

39 and fees required, and meet applicable licensing provisions as required by this chapter and by
40 rule of the commissioner.

41 ~~(e)~~ (f) *Advertising.* -- A licensee authorized under this section may advertise a particular
42 brand or brands of nonintoxicating beer or nonintoxicating craft beer and the price of the
43 nonintoxicating beer or nonintoxicating craft beer subject to state and federal requirements or
44 restrictions. The advertisement may not encourage intemperance.

45 ~~(f)~~ (g) *Growler requirements.* -- A licensee authorized under this section must fill a growler
46 and patrons are not permitted to access the secure area or fill a growler. A licensee authorized
47 under this section must sanitize, fill, securely seal and label any growler prior to its sale. A licensee
48 authorized under this section may only offer for retail sale up to two 64-ounce, or four 32-ounce,
49 growlers of nonintoxicating beer or nonintoxicating craft beer per customer per day for personal
50 consumption off of the licensed premises and not for resale. A licensee under this section may
51 refill a growler subject to the requirements of this section. A licensee shall visually inspect any
52 growler before filling or refilling it. A licensee may not fill or refill any growler that appears to be
53 cracked, broken, unsafe or otherwise unfit to serve as a sealed beverage container.

54 ~~(g)~~ (h) *Growler labeling.* -- A licensee authorized under this section selling growlers shall
55 affix a conspicuous label on all sold and securely sealed growlers listing the name of the licensee
56 selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer in the
57 growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating craft beer in
58 the growler and the date the growler was filled or refilled, and, further, all labeling on the growler
59 shall be consistent with all federal labeling and warning requirements.

60 ~~(h)~~ (i) *Growler sanitation.* -- A licensed brewer or resident brewer authorized under this
61 section shall clean and sanitize all growlers he or she fills or refills in accordance with all state
62 and county health requirements prior to its sealing. In addition, the licensed brewer or resident
63 brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap
64 lines, pipe lines, barrel tubes and any other related equipment used to fill or refill growlers. Failure

65 to comply with this subsection may result in penalties under section twenty-three of this article.

66 ~~(j)~~ (i) *Fee.* -- Commencing July 1, 2015, and by every July 1 thereafter, there is an annual
67 \$100 nonrefundable fee for a licensee, except for a licensed brewpub, to sell growlers as provided
68 by this section. The licensee must be in good standing with the state at the time of paying the fee.

69 ~~(j)~~ (k) *Limitations on licensees.* -- A licensee under this section may only sell growlers
70 during the hours of operation set forth in subdivision (1), subsection (a), section eighteen of this
71 article. Any licensee licensed under this section must maintain a secure area for the sale of
72 nonintoxicating beer or nonintoxicating craft beer in a growler. The secure area must only be
73 accessible by the licensee. Any licensee licensed under this section shall be subject to the
74 applicable penalties under section twenty-three of this article for violations of this section.

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

80 ~~(k)~~ (m) *Rules.* -- The commissioner is authorized to propose rules for legislative approval,
81 pursuant to article three, chapter twenty-nine-a of this code, to implement this section.

§11-16-11a. Nonintoxicating beer sampling.

1 (a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee
2 may ~~with the written approval of the commissioner, conduct a nonintoxicating beer sampling event~~
3 ~~on a designated nonintoxicating beer sampling day~~ serve customers complimentary
4 nonintoxicating beer samples, with all taxes paid, from its inventory.

5 ~~(b) At least five business days prior to the nonintoxicating beer sampling, the Class A retail~~
6 ~~licensee shall submit a written proposal to the commissioner requesting to hold a nonintoxicating~~
7 ~~beer sampling event, including:~~

8 ~~(1) The day of the event;~~

- 9 ~~(2) the location of the event;~~
- 10 ~~(3) The times for the event;~~
- 11 ~~(4) The names of up to three specific brands, types and flavors, if any, of the~~
12 ~~nonintoxicating beer to be sampled; and~~
- 13 ~~(5) A statement indicating that all the nonintoxicating beer brands have been registered~~
14 ~~and approved for sale in the state by the commissioner.~~
- 15 ~~(c) Upon approval by the commissioner, A Class A retail licensee may serve the~~
16 ~~complimentary nonintoxicating beer samples of the approved brands, types and flavors that are~~
17 ~~purchased by the Class A retail licensee, with all taxes paid, from its inventory.~~
- 18 ~~(d) (b)~~ The complimentary nonintoxicating beer sample on any ~~nonintoxicating beer~~
19 ~~sampling~~ one day shall not exceed:
- 20 (1) One separate and individual sample serving per brand, type and flavor per customer
21 verified to be twenty-one years of age or older; and
- 22 (2) Two ounces in total volume per brand, type and flavor.
- 23 ~~(e) (c)~~ Servers ~~at the nonintoxicating beer sampling event~~ of complimentary
24 nonintoxicating beer samples shall:
- 25 (1) Be employees of the Class A retail licensee;
- 26 (2) Be at least twenty-one years of age or older; and
- 27 (3) Have specific knowledge of the nonintoxicating beer being sampled to convey to the
28 customer.
- 29 ~~(f) (d)~~ All servers ~~at the nonintoxicating beer sampling event~~ of complimentary
30 nonintoxicating beer samples shall verify the age of the customer sampling nonintoxicating beer
31 by requiring and reviewing proper forms of identification. Servers ~~at the nonintoxicating beer event~~
32 of complimentary nonintoxicating beer samples may not serve any person who is:
- 33 (1) Under the age of twenty-one years; or
- 34 (2) Intoxicated.

35 ~~(g)~~ (e) A ~~nonintoxicating beer sampling event shall~~ Provision of complimentary
36 nonintoxicating beer samples shall occur only inside the Class A retail licensee's licensed
37 premises.

38 ~~(1) Occur only inside the Class A retail licensee's licensed premises; and~~

39 ~~(2) Cease on or before 9:00 p.m. on any approved nonintoxicating beer sampling day.~~

40 ~~(h)~~ (f) Any nonintoxicating beer bottle or can used for sampling ~~must~~ shall be from the
41 inventory of the licensee. ~~and clearly and conspicuously labeled "SAMPLE, NOT FOR RESALE".~~
42 ~~If the seal is broken on any nonintoxicating beer bottle or can, or if any nonintoxicating beer bottle~~
43 ~~or can is opened, then that nonintoxicating beer bottle or can must be removed from the licensed~~
44 ~~premises immediately following the event.~~

45 ~~(i)~~ (g) Violations of this section are subject to the civil and criminal penalties set forth in
46 sections eighteen, nineteen, twenty, twenty-two, twenty-three, twenty-four and twenty-five of this
47 article;

48 ~~(j)~~ (h) To implement the provisions of this section, the commissioner may promulgate
49 emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a
50 of this code or propose rules for legislative approval in accordance with the provisions of article
51 three, chapter twenty-nine-a of this code.

NOTE: The purpose of this bill is to permit licensed brewpubs, Class A retail dealers, Class B retail dealers, private clubs, Class A retail licensees and Class B retail licensees to serve complimentary samples of nonintoxicating beer or nonintoxicating craft beer manufactured in the State of West Virginia and to remove prior restrictions on Class A retail licensees' ability to serve complimentary nonintoxicating beer samples to customers.

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