

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 3074

BY DELEGATES WALTERS, AMBLER, WILSON, MAYNARD,

PAYNTER AND ROWE

[Introduced March 14, 2017; Referred
to the Committee on Health and Human Resources
then the Judiciary.]

1 A BILL to amend and reenact §11-16-3 of the Code of West Virginia, 1931, as amended, relating
2 to increasing the volume of alcohol that nonintoxicating beer and nonintoxicating craft beer
3 may contain from twelve to eighteen percent.

Be it enacted by the Legislature of West Virginia:

1 That §11-16-3 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

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

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

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

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

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

18 (5) "Class B retail license" means a retail license permitting the retail sale of liquor at a

19 mixed retail liquor outlet licensed pursuant to chapter sixty of this code.

20 (6) "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner.

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

30 (8) "Franchise agreement" means the written agreement between a brewer and a
31 distributor that is identical as to terms and conditions between the brewer and all its distributors,
32 which agreement has been approved by the commissioner. The franchise agreement binds the
33 parties so that a distributor, appointed by a brewer, may distribute all of the brewer's
34 nonintoxicating beer products, brands or family of brands imported and offered for sale in West
35 Virginia, including, but not limited to, existing brands, line extensions and new brands all in the
36 brewer's assigned territory for the distributor. All brands and line extensions being imported or
37 offered for sale in West Virginia must be listed by the brewer in the franchise agreement or a
38 written amendment to the franchise agreement. A franchise agreement may be amended by
39 mutual written agreement of the parties as approved by the commissioner with identical terms
40 and conditions for a brewer and all of its distributors. Any approved amendment to the franchise
41 agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually
42 agree in writing to cancel a franchise agreement. A distributor terminated by a brewer as provided
43 in this article and the promulgated rules no longer has a valid franchise agreement. If a brewer
44 has reached an agreement to cancel a distributor or has terminated a distributor, then a brewer

45 may appoint a successor distributor who accedes to all the rights of the cancelled or terminated
46 distributor.

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

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

58 (11) "Growler" means a container or jug that is made of glass, ceramic, metal or other
59 material approved by the commissioner, that may be only thirty-two or sixty-four fluid ounces in
60 size and must be capable of being securely sealed. The growler is utilized by an authorized
61 licensee for purposes of off-premise sales only of nonintoxicating beer or nonintoxicating craft
62 beer for personal consumption not on a licensed premise and not for resale. Notwithstanding any
63 other provision of this code to the contrary, a securely sealed growler is not an open container
64 under federal, state and local law. A growler with a broken seal is an open container under federal,
65 state and local law unless it is located in an area of the motor vehicle physically separated from
66 the passenger compartment. The secure sealing of a growler requires the use of a tamper-
67 resistant seal, security tape or other material, as approved by the commissioner, placed on or
68 over the growler's opening, which seal, security tape or other material is clearly marked with the
69 date of the secure sealing by the authorized licensee who is selling the growler.

70 (12) "Line extension" means any nonintoxicating beer product that is an extension of brand

71 or family of brands that is labeled, branded, advertised, marketed, promoted or offered for sale
72 with the intent or purpose of being manufactured, imported, associated, contracted, affiliated or
73 otherwise related to a brewer's existing brand through the use of a brewer, its subsidiaries, parent
74 entities, contracted entities, affiliated entities or other related entities. In determining whether a
75 nonintoxicating beer product is a line extension, the commissioner may consider, but is not limited
76 to, the following factors: Name or partial name; trade name or partial trade name; logos;
77 copyrights; trademarks or trade design; product codes; advertising promotion or pricing.

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

86 (14) "Nonintoxicating beer sampling event" means an event approved by the
87 commissioner for a Class A retail licensee to hold a nonintoxicating beer sampling authorized
88 pursuant to section eleven-a of this article.

89 (15) "Nonintoxicating beer sampling day" means any days and hours of the week where
90 Class A retail licensees may sell nonintoxicating beer pursuant to section eleven-a and
91 subdivision (1), subsection (a), section eighteen of this article, and is approved, in writing, by the
92 commissioner to conduct a nonintoxicating beer sampling event.

93 (16) "Nonintoxicating craft beer" means any beverage obtained by the natural fermentation
94 of barley, malt, hops or any other similar product or substitute and containing not less than one
95 half of one percent by volume and not more than ~~twelve~~ eighteen percent alcohol by volume or
96 nine and six-tenths percent alcohol by weight with no caffeine infusion or any additives masking

97 or altering the alcohol effect.

98 (17) "Original container" means the container used by a resident brewer or brewer at the
99 place of manufacturing, bottling or otherwise producing nonintoxicating beer or nonintoxicating
100 craft beer for sale at wholesale.

101 (18) "Person" means and includes an individual, firm, partnership, limited partnership,
102 limited liability company, association or corporation.

103 (19) "Private club" means a license issued pursuant to article seven, chapter sixty of this
104 code.

105 (20) "Resident brewer" means any brewer or manufacturer of nonintoxicating beer or
106 nonintoxicating craft beer whose principal place of business and manufacture is located in the
107 state of West Virginia and which does not brew or manufacture more than twenty-five thousand
108 barrels of nonintoxicating beer or nonintoxicating craft beer annually, and does not self-distribute
109 more than ten thousand barrels thereof in the State of West Virginia annually.

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

113 (22) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or
114 the commissioner's designee.

NOTE: The purpose of this bill is to increase the volume of alcohol that nonintoxicating beer and nonintoxicating craft beer may contain from twelve to eighteen percent.

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