

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

Introduced

### Senate Bill 353

FISCAL  
NOTE

BY SENATORS TRUMP, WELD, AND TAKUBO

[Introduced January 24, 2018; Referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §11-16-3, §11-16-5, §11-16-6a, §11-16-6b, and §11-16-9 of the  
 2 Code of West Virginia, 1931, as amended, all relating to creating a temporary license for  
 3 nonintoxicating beer floor plan extensions of existing licensee floorplans; implementing a  
 4 fee for the new license; implementing a reactivation fee for licensees that fail to timely file  
 5 their renewal applications and pay their license fees; removing the two growler limit per  
 6 patron per day for licensees who sell growlers for off premises consumption; and creating  
 7 a sampling for retailers authorized to sell growlers.

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

**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 trans-shipped 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 trans-shipping 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 60 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 60 of this code.

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

22 (7) "Distributor" means and includes any person jobbing or distributing nonintoxicating  
23 beer or nonintoxicating craft beer to retailers at wholesale and whose warehouse and chief place  
24 of business shall be within this state. For purposes of a distributor only, the term "person" means  
25 and includes an individual, firm, trust, partnership, limited partnership, limited liability company,  
26 association or corporation. Any trust licensed as a distributor or any trust that is an owner of a  
27 distributor licensee, and the trustee or other persons in active control of the activities of the trust  
28 relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the  
29 distributor license that are unlawful acts or violations of §11-11-1 *et seq.* of this code  
30 notwithstanding the liability of trustees in §44D-10-1 *et seq.*, of this code.

31 (8) "Franchise agreement" means the written agreement between a brewer and a  
32 distributor that is identical as to terms and conditions between the brewer and all its distributors,  
33 which agreement has been approved by the commissioner. The franchise agreement binds the  
34 parties so that a distributor, appointed by a brewer, may distribute all of the brewer's  
35 nonintoxicating beer products, brands or family of brands imported and offered for sale in West  
36 Virginia, including, but not limited to, existing brands, line extensions, and new brands all in the  
37 brewer's assigned territory for the distributor. All brands and line extensions being imported or  
38 offered for sale in West Virginia must be listed by the brewer in the franchise agreement or a  
39 written amendment to the franchise agreement. A franchise agreement may be amended by  
40 mutual written agreement of the parties as approved by the commissioner with identical terms  
41 and conditions for a brewer and all of its distributors. Any approved amendment to the franchise  
42 agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually

43 agree in writing to cancel a franchise agreement. A distributor terminated by a brewer as provided  
44 in this article and the promulgated rules no longer has a valid franchise agreement. If a brewer  
45 has reached an agreement to cancel a distributor or has terminated a distributor, then a brewer  
46 may appoint a successor distributor who accedes to all the rights of the cancelled or terminated  
47 distributor.

48 (9) "Franchise distributor network" means the distributors who have entered into a binding  
49 written franchise agreement, identical as to terms and conditions, to distribute nonintoxicating  
50 beer products, brands and line extensions in an assigned territory for a brewer. A brewer may  
51 only have one franchise distributor network: *Provided*, That a brewer that has acquired the  
52 manufacturing, bottling, or other production rights for the sale of nonintoxicating beer at wholesale  
53 from a selling brewer as specified in §11-16-21(a)(2) of this code shall continue to maintain and  
54 be bound by the selling brewer's separate franchise distributor's network for any of its existing  
55 brands, line extensions and new brands.

56 (10) "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, wine,  
57 beer, nonintoxicating beer, and other alcohol-related products, as defined pursuant to §60-3A-4  
58 of this code.

59 (11) "Growler" means a container or jug that is made of glass, ceramic, metal, or other  
60 material approved by the commissioner, that may be only 32 or 64 fluid ounces in size and must  
61 be capable of being securely sealed. The growler is utilized by an authorized licensee for  
62 purposes of off-premise sales only of nonintoxicating beer or nonintoxicating craft beer for  
63 personal consumption not on a licensed premise and not for resale. Notwithstanding any other  
64 provision of this code to the contrary, a securely sealed growler is not an open container under  
65 federal, state and local law. A growler with a broken seal is an open container under federal, state  
66 and local law unless it is located in an area of the motor vehicle physically separated from the  
67 passenger compartment. The secure sealing of a growler requires the use of a tamper-resistant  
68 seal, security tape, or other material, as approved by the commissioner, placed on or over the

69 growler's opening, which seal, security tape or other material is clearly marked with the date of  
70 the secure sealing by the authorized licensee who is selling the growler.

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

79 (13) "Nonintoxicating beer" means all natural cereal malt beverages or products of the  
80 brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and  
81 preparations produced by the brewing industry, including malt coolers and nonintoxicating craft  
82 beers with no caffeine infusion or any additives masking or altering the alcohol effect containing  
83 at least one half of one percent alcohol by volume, but not more than 9.6 percent of alcohol by  
84 weight, or 12 percent by volume, whichever is greater. The word "liquor" as used in chapter 60 of  
85 this code does not include or embrace nonintoxicating beer nor any of the beverages, products,  
86 mixtures, or preparations included within this definition.

87 (14) "Nonintoxicating beer floor plan extension" means a temporary one-day extension of  
88 an existing Class A licensee's floor plan to a contiguous, adjoining and bounded area, such as a  
89 parking lot or outdoor area, which shall, for the temporary period, encompass the licensee's  
90 licensed premises. The license shall be endorsed or approved by the county or municipality where  
91 the license is located. The licensee shall be in good standing with the commissioner. The  
92 temporary event shall cease on or before midnight of the approved one-day event.

93 ~~(14)~~ (15) "Nonintoxicating beer sampling event" means an event approved by the  
94 commissioner for a Class A retail licensee to hold a nonintoxicating beer sampling authorized

95 pursuant to §11-16-11a of this code.

96 ~~(15)~~ (16) “Nonintoxicating beer sampling day” means any days and hours of the week  
97 where Class A retail licensees may sell nonintoxicating beer pursuant to §11-16-11a and §11-16-  
98 18(a)(1) of this code, and is approved, in writing, by the commissioner to conduct a nonintoxicating  
99 beer sampling event.

100 ~~(16)~~ (17) “Nonintoxicating craft beer” means any beverage obtained by the natural  
101 fermentation of barley, malt, hops, or any other similar product or substitute and containing not  
102 less than one half of one percent by volume and not more than 12 percent alcohol by volume or  
103 9.6 percent alcohol by weight with no caffeine infusion or any additives masking or altering the  
104 alcohol effect.

105 ~~(17)~~ (18) “Original container” means the container used by a resident brewer or brewer at  
106 the place of manufacturing, bottling, or otherwise producing nonintoxicating beer or  
107 nonintoxicating craft beer for sale at wholesale.

108 ~~(18)~~ (19) “Person” means and includes an individual, firm, partnership, limited partnership,  
109 limited liability company, association, or corporation.

110 ~~(19)~~ (20) “Private club” means a license issued pursuant to §60-7-1 *et seq.*, of this code.

111 ~~(20)~~ (21) “Resident brewer” means any brewer or manufacturer of nonintoxicating beer or  
112 nonintoxicating craft beer whose principal place of business and manufacture is located in the  
113 State of West Virginia and which does not brew or manufacture more than 25,000 barrels of  
114 nonintoxicating beer or nonintoxicating craft beer annually, and does not self-distribute more than  
115 10,000 barrels thereof in the State of West Virginia annually.

116 ~~(21)~~ (22) “Retailer” means any person selling, serving, or otherwise dispensing  
117 nonintoxicating beer and all products regulated by this article, including, but not limited to, malt  
118 coolers at his or her established and licensed place of business.

119 ~~(22)~~ (23) “Tax Commissioner” means the Tax Commissioner of the State of West Virginia  
120 or the commissioner's designee.

**§11-16-5. State license required; alcoholic content of beer manufactured for sale without state.**

1 No person shall manufacture, sell, possess for sale, serve, tender, transport or distribute  
2 nonintoxicating beer except in accordance with the provisions of this article, and after first  
3 obtaining a state license therefor, as provided in this article. Nothing contained in this article shall  
4 prohibit any brewer located within the state from manufacturing or transporting for sale without  
5 the state beer of an alcoholic strength greater than that of nonintoxicating beer.

**§11-16-6a. Brewer and resident brewer license to manufacture, sell 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,  
5 and promote hospitality and tourism. Therefore, this section authorizes a licensed brewer or  
6 resident brewer with its principal place of business and manufacture located in this state to have  
7 certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer  
8 manufactured in this state for the benefit of the citizens of this state, the state's growing brewing  
9 industry and the state's hospitality and tourism industry, all of which are vital components for the  
10 state's economy.

11 (b) *Sales of nonintoxicating beer.* -- A licensed brewer or resident brewer with its principal  
12 place of business and manufacture located in the State of West Virginia may offer only  
13 nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident  
14 brewer for retail sale to customers from the brewer's or resident brewer's licensed premises for  
15 consumption off the licensed premises only in the form of kegs, bottles, cans or growlers for  
16 personal consumption and not for resale. A licensed brewer or resident brewer may not sell, give  
17 or furnish nonintoxicating beer for consumption on the premises of the principal place of business

18 and manufacture located in the State of West Virginia, except for the limited purpose of  
19 complimentary samples as permitted in subsection (c) of this section.

20 (c) *Complimentary samples.* -- A licensed brewer or resident brewer with its principal place  
21 of business and manufacture located in the State of West Virginia may only offer complimentary  
22 samples of nonintoxicating beer or nonintoxicating craft beer brewed at the brewer's or resident  
23 brewer's principal place of business and manufacture located in the State of West Virginia. The  
24 complimentary samples may be no greater than two ounces per sample per patron, and a  
25 sampling shall not exceed ten complimentary two-ounce samples per patron per day. A licensed  
26 brewer or resident brewer providing complimentary samples shall provide complimentary food  
27 items to the patron consuming the complimentary samples; and prior to any sampling, verify,  
28 using proper identification, that the patron sampling is 21 years of age or over and that the patron  
29 is not visibly intoxicated.

30 (d) *Retail sales.* -- Every licensed brewer or resident brewer under this section shall comply  
31 with all the provisions of this article as applicable to nonintoxicating beer retailers when conducting  
32 sales of nonintoxicating beer or nonintoxicating craft beer and shall be subject to all applicable  
33 requirements and penalties in this article.

34 (e) *Payment of taxes and fees.* -- A licensed brewer or resident brewer under this section  
35 shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in addition to any  
36 other taxes and fees required, and meet applicable licensing provisions as required by this  
37 chapter and by rule of the commissioner.

38 (f) *Advertising.* -- A licensed brewer or resident brewer under this section may advertise a  
39 particular brand or brands of nonintoxicating beer or nonintoxicating craft beer produced by the  
40 licensed brewer or resident brewer and the price of the nonintoxicating beer or nonintoxicating  
41 craft beer subject to state and federal requirements or restrictions. The advertisement may not  
42 encourage intemperance.

43 (g) *Growler requirements.* -- A licensed brewer or resident brewer under this section must



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

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

60 (i) *Growler sanitation.* -- A licensed brewer or resident brewer authorized under this section  
61 shall clean and sanitize all growlers he or she fills or refills in accordance with all state and county  
62 health requirements prior to its sealing. In addition, the licensed brewer or resident brewer shall  
63 sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines,  
64 barrel tubes and any other related equipment used to fill or refill growlers. Failure to comply with  
65 this subsection may result in penalties under §11-16-23 of this code.

66 (j) *Fee.* -- There is no additional fee for a licensed brewer or resident brewer authorized  
67 under this section to sell growlers.

68 (k) *Limitations on licensees.* -- To be authorized under this section, a licensed brewer or  
69 resident brewer may not produce more than 25,000 barrels per calendar year at the brewer's or

70 resident brewer's principal place of business and manufacture located in the State of West  
71 Virginia. No more than one brewer or resident brewer license may be issued to a single person  
72 or entity and no person may hold both a brewer and a resident brewer license. A licensed brewer  
73 or resident brewer under this section may only conduct tours, give complimentary samples and  
74 sell growlers during the hours of operation set forth in §11-16-18(a)(1) of this code. A licensed  
75 brewer or resident brewer authorized under this section shall be subject to the applicable penalties  
76 under §11-16-23 of this code for violations of this section.

77 (l) *Rules.* -- The commissioner, in consultation with the Bureau for Public Health  
78 concerning sanitation, is authorized to propose rules for legislative approval, pursuant to §29A-3-  
79 1 *et seq.* of this code, to implement this section.

**§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 21 years of age or over and that the patron is not visibly  
18 intoxicated. A licensee authorized under this section may not sell, give or furnish alcoholic liquors,  
19 including wine, for consumption off of its licensed premises, unless it is a private club licensed to  
20 sell sealed wine for consumption off of the licensed premises and meets the requirements set out  
21 in subdivisions §60-8-3(j) and §60-8-3(l), of this code, for the sale of wine, not liquor.

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

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

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

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

41 growler before filling or refilling it. A licensee may not fill or refill any growler that appears to be  
42 cracked, broken, unsafe or otherwise unfit to serve as a sealed beverage container.

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

49 (h) *Growler sanitation.* -- A licensed brewer or resident brewer authorized under this  
50 section shall clean and sanitize all growlers he or she fills or refills in accordance with all state  
51 and county health requirements prior to its sealing. In addition, the licensed brewer or resident  
52 brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap  
53 lines, pipe lines, barrel tubes and any other related equipment used to fill or refill growlers. Failure  
54 to comply with this subsection may result in penalties under §11-16-23 of this code.

55 (i) *Fees.* -- Commencing July 1, 2015, and ~~by~~ every July 1 thereafter, there is an annual  
56 \$100 nonrefundable fee for a licensee, except for a licensed brewpub, to sell growlers as provided  
57 by this section. The licensee must be in good standing with the state at the time of paying the fee.  
58 Commencing July 1, 2018, and every July 1 thereafter, an additional annual nonrefundable fee of  
59 \$100 will permit nonintoxicating beer or nonintoxicating craft beer sampling prior to the purchase  
60 of a growler as set forth in subsection l of this section.

61 (j) *Limitations on licensees.* -- A licensee under this section may only sell growlers during  
62 the hours of operation set forth in subdivision §11-16-18(a)(1) of this code. Any licensee licensed  
63 under this section must maintain a secure area for the sale of nonintoxicating beer or  
64 nonintoxicating craft beer in a growler. The secure area must only be accessible by the licensee.  
65 Any licensee licensed under this section shall be subject to the applicable penalties under §11-  
66 16-23 of this code.

67           (k) *Nonapplicability of certain statutes.* -- Notwithstanding any other provision of this code  
68 to the contrary, licensees under this section are permitted to break the seal of the original  
69 container for the limited purpose of filling a growler as provided in this section or for those  
70 licensees obtaining a nonintoxicating beer or nonintoxicating craft beer growler sampling license  
71 for the limited purpose of providing samples in limited quantities to proper patrons who intend to  
72 purchase a growler as set forth in this section of the code. Any unauthorized sale of  
73 nonintoxicating beer or nonintoxicating craft beer or any consumption not permitted on the  
74 licensee's licensed premises is subject to penalties under this article.

75           (l) *Complimentary samples.* – A licensee authorized under this section and who has  
76 obtained the nonintoxicating beer or nonintoxicating craft beer growler sampling license may only  
77 offer complimentary samples to patrons intending to purchase a growler. The complimentary  
78 samples may be no greater than a one-ounce per sample per patron, and a sampling may not  
79 exceed three complimentary one-ounce samples per patron per day. A licensee authorized under  
80 this section and who has obtained the nonintoxicating beer or nonintoxicating craft beer growler  
81 sampling license providing complimentary samples shall provide complimentary food items to the  
82 patron consuming the complimentary samples; and prior to any sampling, verify, using proper  
83 identification, that the patron sampling is 21 years of age or over and that the patron is not visibly  
84 intoxicated. A licensee authorized under this section and who has obtained the nonintoxicating  
85 beer or nonintoxicating craft beer growler sampling license may have its employees who are 21  
86 years of age or over provide the complimentary samples to patrons. Licensed representatives of  
87 a brewer, resident brewer or distributor may attend a sampling event held at the licensed premises  
88 of a licensee authorized under this section and who has obtained the nonintoxicating beer or  
89 nonintoxicating craft beer growler sampling license, however they may not provide, furnish, serve  
90 or sell any nonintoxicating beer or nonintoxicating craft beer and may only speak about the  
91 product that they represent and that is being sampled. Any nonintoxicating beer or nonintoxicating  
92 craft beer must be furnished by the licensee authorized under this section and who has obtained

93 the nonintoxicating beer or nonintoxicating craft beer growler sampling license from its own  
 94 purchased inventory, with all taxes and fees paid on such beer, and may not be given or furnished  
 95 by a brewer, resident brewer, or distributor. In no event, shall a licensee authorized under this  
 96 section and who has obtained the nonintoxicating beer or nonintoxicating craft beer growler  
 97 sampling license, permit any patron to consume nonintoxicating beer or nonintoxicating craft beer  
 98 from a growler or poured from a growler, such action shall result in the immediate suspension of  
 99 the licensee's license.

100 (m) Rules. -- The commissioner is authorized to propose rules for legislative approval,  
 101 pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

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

1 (a) All retail dealers, distributors, brewpubs, brewers and resident brewers of  
 2 nonintoxicating beer and of nonintoxicating craft beer shall pay an annual fee to maintain an active  
 3 license as required by this article. The license period begins on July 1 of each year and ends on  
 4 June 30 of the following year. If the license is granted for a shorter period, then the license fee  
 5 shall be computed semiannually in proportion to the remainder of the fiscal year. A licensee that  
 6 fails to complete a renewal application and make payment of its annual license fee in renewing  
 7 its license on or before June 30 of any subsequent year, after initial application, shall be charged  
 8 an additional \$150 reactivation fee. The fee may not be prorated or refunded, prior to the  
 9 processing of any renewal application and applicable full year annual license fee. A licensee who  
 10 continues to operate upon the expiration of its license is subject to all fines, penalties and  
 11 sanctions available in §11-16-23 of this code, all as determined by the commissioner.

12 (b) The annual license fees are as follows:

13 (1) Retail dealers shall be divided into two classes: Class A and Class B.

14 (A) For a Class A retail dealer, the license fee is \$150 for each place of business; the  
 15 license fee for social, fraternal or private clubs not operating for profit, and having been in

16 continuous operation for two years or more immediately preceding the date of application, is \$150:  
17 *Provided*, That railroads operating in this state may dispense nonintoxicating beer upon payment  
18 of an annual license tax of \$10 for each dining, club or buffet car in which the beer is dispensed.

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

23 (B) For a Class B retail dealer, the license fee, authorizing the sale of both chilled and  
24 unchilled beer, is \$150 for each place of business. A Class B license authorizes the licensee to  
25 sell nonintoxicating beer at retail in bottles, cans or other sealed containers only, and only for  
26 consumption off the licensed premises. A Class B retailer may sell to a patron, for personal use  
27 and not for resale, quantities of draught beer in original containers that are no larger in size than  
28 one-half barrel for off-premises consumption.

29 A Class B license may be issued only to the proprietor or owner of a grocery store. For  
30 the purpose of this article, the term "grocery store" means any retail establishment commonly  
31 known as a grocery store or delicatessen, and caterer or party supply store, where food or food  
32 products are sold for consumption off the premises, and includes a separate and segregated  
33 portion of any other retail store which is dedicated solely to the sale of food, food products and  
34 supplies for the table for consumption off the premises. Caterers or party supply stores are  
35 required to purchase the appropriate licenses from the Alcohol Beverage Control Administration.

36 (2) For a distributor, the license fee is \$1,000 for each place of business.

37 (3) For a brewer or a resident brewer with its principal place of business or manufacture  
38 located in this state and who produces:

39 (A) Twelve thousand five hundred barrels or less of nonintoxicating beer or nonintoxicating  
40 craft beer, the license fee is \$500 for each place of manufacture;

41 (B) Twelve thousand five hundred one barrels and up to 25,000 barrels of nonintoxicating

42 beer or nonintoxicating craft beer, the license fee is \$1,000 for each place of manufacture;

43 (C) More than 25,001 barrels of nonintoxicating beer or nonintoxicating craft beer, the  
44 license fee is \$1,500 for each place of manufacture.

45 (4) For a brewer whose principal place of business or manufacture is not located in this  
46 state, the license fee is \$1,500. The brewer is exempt from the requirements set out in subsections  
47 (c), (d) and (e) of this section: *Provided*, That a brewer whose principal place of business or  
48 manufacture is not located in this state that produces less than 25,000 barrels of nonintoxicating  
49 beer or nonintoxicating craft beer may choose to apply in writing to the commissioner to be subject  
50 to the variable license fees of subdivision (3), subsection (b) of this section and the requirements  
51 set out in subsections (c), (d) and (e) of this section subject to investigation and approval by the  
52 commissioner as to brewer requirements.

53 (5) For a brewpub, the license fee is \$500 for each place of manufacture.

54 (c) As part of the application or renewal application and in order to determine a brewer or  
55 resident brewer's license fee pursuant to this section, a brewer or resident brewer shall provide  
56 the commissioner, on a form provided by the commissioner, with an estimate of the number of  
57 nonintoxicating beer or nonintoxicating craft beer barrels and gallons it will produce during the  
58 year based upon the production capacity of the brewer's or resident brewer's manufacturing  
59 facilities, and the prior year's production and sales volume of nonintoxicating beer or  
60 nonintoxicating craft beer.

61 (d) On or before July 15 of each year, every brewer or resident brewer who is granted a  
62 license shall file a final report, on a form provided by the commissioner, that is dated as of June  
63 30 of each year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in  
64 barrels and gallons produced at its principal place of business and manufacture during the prior  
65 year.

66 (e) If the actual total production of nonintoxicating beer or nonintoxicating craft beer by the  
67 brewer or resident brewer exceeded the brewer's or resident brewer's estimate that was filed with



68 the application or renewal for a brewer<s or resident brewer's license for that period, then the  
69 brewer or resident brewer shall include a remittance for the balance of the license fee pursuant  
70 to this section that would be required for the final, higher level of production.

71 (f) Any brewer or resident brewer failing to file the reports required in subsections (c) and  
72 (d) of this section, and who is not exempt from the reporting requirements, shall, at the discretion  
73 of the commissioner, be subject to the penalties set forth in §11-16-23 of this code.

74 (g) Notwithstanding subsections (a) and (b) of this section, the license fee per event for a  
75 nonintoxicating beer floor plan extension is \$100. The fee may not be prorated or refunded. The  
76 fee must be accompanied with a license application and certification that the event meets certain  
77 requirements in the code and rules, and other information the commissioner may reasonably  
78 require, at least 15 days prior to the event, all as determined by the commissioner.

NOTE: The purpose of this bill is to modernize certain aspects of the beer laws relating to floor plan extension for existing licenses who are in good standing and permitting the West Virginia Alcohol Beverage Control Administration to collect a fee for the extra work performed in allowing this license privilege, to encourage licensees to apply for renewals of their license in a timely and effective manner but if they fail to do so a reactivation fee will be applied prior to their renewal, permitting growler licensees to sell growlers to patrons without quantity restrictions, and creating a sampling license for retailers authorized to sell growlers.

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