WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 353

BY SENATORS TRUMP, WELD, AND TAKUBO

[Introduced January 24, 2018; Referred to the Committee on the Judiciary]
A BILL to amend and reenact §11-16-3, §11-16-5, §11-16-6a, §11-16-6b, and §11-16-9 of the Code of West Virginia, 1931, as amended, all relating to creating a temporary license for nonintoxicating beer floor plan extensions of existing licensee floorplans; implementing a fee for the new license; implementing a reactivation fee for licensees that fail to timely file their renewal applications and pay their license fees; removing the two growler limit per patron per day for licensees who sell growlers for off premises consumption; and creating 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.

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

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

(2) “Brewer” or “manufacturer” means any person manufacturing, otherwise producing or importing or trans-shipping nonintoxicating beer or nonintoxicating craft beer for sale at wholesale to any licensed distributor. Brewer or manufacturer may be used interchangeably throughout this article. A brewer may obtain only one brewer’s license for its nonintoxicating beer or nonintoxicating craft beer.

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

(4) “Class A retail license” means a retail license permitting the retail sale of liquor at a
freestanding liquor retail outlet licensed pursuant to chapter 60 of this code.

(5) “Class B retail license” means a retail license permitting the retail sale of liquor at a mixed retail liquor outlet licensed pursuant to chapter 60 of this code.

(6) “Commissioner” means the West Virginia Alcohol Beverage Control Administration Commissioner.

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

(8) “Franchise agreement” means the written agreement between a brewer and a distributor that is identical as to terms and conditions between the brewer and all its distributors, which agreement has been approved by the commissioner. The franchise agreement binds the parties so that a distributor, appointed by a brewer, may distribute all of the brewer's nonintoxicating beer products, brands or family of brands imported and offered for sale in West Virginia, including, but not limited to, existing brands, line extensions, and new brands all in the brewer's assigned territory for the distributor. All brands and line extensions being imported or offered for sale in West Virginia must be listed by the brewer in the franchise agreement or a written amendment to the franchise agreement. A franchise agreement may be amended by mutual written agreement of the parties as approved by the commissioner with identical terms and conditions for a brewer and all of its distributors. Any approved amendment to the franchise agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually
agree in writing to cancel a franchise agreement. A distributor terminated by a brewer as provided in this article and the promulgated rules no longer has a valid franchise agreement. If a brewer has reached an agreement to cancel a distributor or has terminated a distributor, then a brewer may appoint a successor distributor who accedes to all the rights of the cancelled or terminated distributor.

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

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

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

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

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

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

(14) (15) “Nonintoxicating beer sampling event” means an event approved by the
commissioner for a Class A retail licensee to hold a nonintoxicating beer sampling authorized
pursuant to §11-16-11a of this code.

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

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

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

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

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

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

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

(22) (23) “Tax Commissioner” means the Tax Commissioner of the State of West Virginia or the commissioner's designee.
§11-16-5. State license required; alcoholic content of beer manufactured for sale without state.

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

(a) Legislative findings. -- The Legislature hereby finds that it is in the public interest to regulate, control and support the brewing, manufacturing, distribution, sale, consumption, transportation and storage of nonintoxicating beer and nonintoxicating craft beer and its industry in this state in order to protect the public health, welfare and safety of the citizens of this state, and promote hospitality and tourism. Therefore, this section authorizes a licensed brewer or resident brewer with its principal place of business and manufacture located in this state to have certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer manufactured in this state for the benefit of the citizens of this state, the state’s growing brewing industry and the state’s hospitality and tourism industry, all of which are vital components for the state’s economy.

(b) Sales of nonintoxicating beer. -- A licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia may offer only nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident brewer for retail sale to customers from the brewer’s or resident brewer’s licensed premises for consumption off the licensed premises only in the form of kegs, bottles, cans or growlers for personal consumption and not for resale. A licensed brewer or resident brewer may not sell, give or furnish nonintoxicating beer for consumption on the premises of the principal place of business
and manufacture located in the State of West Virginia, except for the limited purpose of complimentary samples as permitted in subsection (c) of this section.

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

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

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

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

(g) Growler requirements. -- A licensed brewer or resident brewer under this section must
fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensed brewer or resident brewer under this section must sanitize, fill, securely seal and label any growler prior to its sale. A licensed brewer or resident brewer under this section may only offer for retail sale up to two 64-ounce, or four 32-ounce, growlers of nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident brewer per customer per day for personal consumption off of the licensed premises and not for resale. A licensed brewer or resident brewer under this section may refill a growler subject to the requirements of this section.

A licensed brewer or resident brewer shall visually inspect any growler before filling or refilling it. A licensed brewer or resident brewer may not fill or refill any growler that appears to be cracked, broken, unsafe or otherwise unfit to serve as a sealed beverage container.

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

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

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

(k) *Limitations on licensees.* -- To be authorized under this section, a licensed brewer or resident brewer may not produce more than 25,000 barrels per calendar year at the brewer’s or
resident brewer’s principal place of business and manufacture located in the State of West Virginia. No more than one brewer or resident brewer license may be issued to a single person or entity and no person may hold both a brewer and a resident brewer license. A licensed brewer or resident brewer under this section may only conduct tours, give complimentary samples and sell growlers during the hours of operation set forth in §11-16-18(a)(1) of this code. A licensed brewer or resident brewer authorized under this section shall be subject to the applicable penalties under §11-16-23 of this code for violations of this section.

(l) Rules. -- The commissioner, in consultation with the Bureau for Public Health concerning sanitation, is authorized to propose rules for legislative approval, pursuant to §29A-3-1 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.

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

(b) Sales of nonintoxicating beer. -- A licensed brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee or Class B retail licensee who pays the fee in subsection (i) of this section and meets the requirements of this section may offer nonintoxicating beer or nonintoxicating craft beer for retail sale to patrons from their licensed premises in a growler
for personal consumption only off of the licensed premises and not for resale. Prior to the sale, the licensee shall verify, using proper identification, that any patron purchasing nonintoxicating beer or nonintoxicating craft beer is 21 years of age or over and that the patron is not visibly intoxicated. A licensee authorized under this section may not sell, give or furnish alcoholic liquors, including wine, for consumption off of its licensed premises, unless it is a private club licensed to sell sealed wine for consumption off of the licensed premises and meets the requirements set out in subdivisions §60-8-3(j) and §60-8-3(l), of this code, for the sale of wine, not liquor.

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

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

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

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

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

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

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

(j) Limitations on licensees. -- A licensee under this section may only sell growlers during the hours of operation set forth in subdivision §11-16-18(a)(1) of this code. Any licensee licensed under this section must maintain a secure area for the sale of nonintoxicating beer or nonintoxicating craft beer in a growler. The secure area must only be accessible by the licensee. Any licensee licensed under this section shall be subject to the applicable penalties under §11-16-23 of this code.
(k) Nonapplicability of certain statutes. — Notwithstanding any other provision of this code to the contrary, licensees under this section are permitted to break the seal of the original container for the limited purpose of filling a growler as provided in this section or for those licensees obtaining a nonintoxicating beer or nonintoxicating craft beer growler sampling license for the limited purpose of providing samples in limited quantities to proper patrons who intend to purchase a growler as set forth in this section of the code. Any unauthorized sale of nonintoxicating beer or nonintoxicating craft beer or any consumption not permitted on the licensee's licensed premises is subject to penalties under this article.

(l) Complimentary samples. — A licensee authorized under this section and who has obtained the nonintoxicating beer or nonintoxicating craft beer growler sampling license may only offer complimentary samples to patrons intending to purchase a growler. The complimentary samples may be no greater than a one-ounce per sample per patron, and a sampling may not exceed three complimentary one-ounce samples per patron per day. A licensee authorized under this section and who has obtained the nonintoxicating beer or nonintoxicating craft beer growler sampling license providing complimentary samples shall provide complimentary food items to the patron consuming the complimentary samples; and prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of age or over and that the patron is not visibly intoxicated. A licensee authorized under this section and who has obtained the nonintoxicating beer or nonintoxicating craft beer growler sampling license may have its employees who are 21 years of age or over provide the complimentary samples to patrons. Licensed representatives of a brewer, resident brewer or distributor may attend a sampling event held at the licensed premises of a licensee authorized under this section and who has obtained the nonintoxicating beer or nonintoxicating craft beer growler sampling license, however they may not provide, furnish, serve or sell any nonintoxicating beer or nonintoxicating craft beer and may only speak about the product that they represent and that is being sampled. Any nonintoxicating beer or nonintoxicating craft beer must be furnished by the licensee authorized under this section and who has obtained
the nonintoxicating beer or nonintoxicating craft beer growler sampling license from its own purchased inventory, with all taxes and fees paid on such beer, and may not be given or furnished by a brewer, resident brewer, or distributor. In no event, shall a licensee authorized under this section and who has obtained the nonintoxicating beer or nonintoxicating craft beer growler sampling license, permit any patron to consume nonintoxicating beer or nonintoxicating craft beer from a growler or poured from a growler, such action shall result in the immediate suspension of the licensee’s license.

(m) Rules. -- The commissioner is authorized to propose rules for legislative approval, 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.

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

(b) The annual license fees are as follows:

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

(A) For a Class A retail dealer, the license fee is $150 for each place of business; the license fee for social, fraternal or private clubs not operating for profit, and having been in
continuous operation for two years or more immediately preceding the date of application, is $150:

Provided, That railroads operating in this state may dispense nonintoxicating beer upon payment of an annual license tax of $10 for each dining, club or buffet car in which the beer is dispensed.

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

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

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

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

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

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

(B) Twelve thousand five hundred one barrels and up to 25,000 barrels of nonintoxicating
beer or nonintoxicating craft beer, the license fee is $1,000 for each place of manufacture; (C) More than 25,001 barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is $1,500 for each place of manufacture. (4) For a brewer whose principal place of business or manufacture is not located in this state, the license fee is $1,500. The brewer is exempt from the requirements set out in subsections (c), (d) and (e) of this section: Provided, That a brewer whose principal place of business or manufacture is not located in this state that produces less than 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer may choose to apply in writing to the commissioner to be subject to the variable license fees of subdivision (3), subsection (b) of this section and the requirements set out in subsections (c), (d) and (e) of this section subject to investigation and approval by the commissioner as to brewer requirements. (5) For a brewpub, the license fee is $500 for each place of manufacture. (c) As part of the application or renewal application and in order to determine a brewer or resident brewer’s license fee pursuant to this section, a brewer or resident brewer shall provide the commissioner, on a form provided by the commissioner, with an estimate of the number of nonintoxicating beer or nonintoxicating craft beer barrels and gallons it will produce during the year based upon the production capacity of the brewer’s or resident brewer’s manufacturing facilities, and the prior year’s production and sales volume of nonintoxicating beer or nonintoxicating craft beer. (d) On or before July 15 of each year, every brewer or resident brewer who is granted a license shall file a final report, on a form provided by the commissioner, that is dated as of June 30 of each year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in barrels and gallons produced at its principal place of business and manufacture during the prior year. (e) If the actual total production of nonintoxicating beer or nonintoxicating craft beer by the brewer or resident brewer exceeded the brewer’s or resident brewer’s estimate that was filed with
the application or renewal for a brewer’s or resident brewer’s license for that period, then the brewer or resident brewer shall include a remittance for the balance of the license fee pursuant to this section that would be required for the final, higher level of production.

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

(g) Notwithstanding subsections (a) and (b) of this section, the license fee per event for a nonintoxicating beer floor plan extension is $100. The fee may not be prorated or refunded. The fee must be accompanied with a license application and certification that the event meets certain requirements in the code and rules, and other information the commissioner may reasonably 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.