

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

House Bill 2392

BY DELEGATES HARTMAN AND CAPUTO

[Originating in the Committee on Government

Organization, February 4, 2019.]

1 A BILL to amend and reenact §11-16-6b of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §11-16-11a of said code, to amend said code by adding thereto a new
3 section, designated §11-16-11b; and to amend said code by adding thereto a new section,
4 designated §60-6-27, all relating to the Alcohol Beverage Control Commissioner;
5 permitting licensed brewpubs, Class A retail dealers, Class B retail dealers, private clubs,
6 Class A retail licensees and Class B retail licensees to serve complimentary samples of
7 nonintoxicating beer or nonintoxicating craft beer manufactured in the State of West
8 Virginia; removing restrictions on Class A retail licensees' ability to serve complimentary
9 nonintoxicating beer samples to customers; permitting the commissioner to issue special
10 one-day licenses for the retail sale of nonintoxicating beer and alcoholic liquors to a duly
11 organized nonprofit corporation, limited liability entity or an association having received
12 federal tax-exempt status, when raising money for artistic, athletic, charitable, educational
13 or religious purposes.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

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 §11-16-6b(i) of this code and meets the requirements of this section may offer nonintoxicating
14 beer or nonintoxicating craft beer for retail sale to patrons from ~~their~~ its licensed premises in a
15 growler for personal consumption only off of the licensed premises and not for resale. Prior to the
16 sale, the licensee shall verify, using proper identification, that any patron purchasing
17 nonintoxicating beer or nonintoxicating craft beer is 21 years of age or over and that the patron is
18 not visibly intoxicated. A licensee authorized under this section may not sell, give or furnish
19 alcoholic liquors, including wine, for consumption off of its licensed premises, unless it is a private
20 club licensed to sell sealed wine for consumption off of the licensed premises and meets the
21 requirements set out in §60-8-3(j) and §60-8-3(l) of this code, for the sale of wine, not liquor.

22 (c) *Complimentary samples.* — Notwithstanding any provision of this code to the contrary,
23 a licensed brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail
24 licensee or Class B retail licensee may offer complimentary samples of nonintoxicating beer or
25 nonintoxicating craft beer manufactured in the State of West Virginia. The complimentary samples
26 may be no greater than two ounces per sample per patron, and a sampling shall not exceed three
27 complimentary two-ounce samples per patron per day. Prior to the sampling, the licensed
28 brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee or Class
29 B retail licensee shall verify, using proper identification, that any patron sampling nonintoxicating
30 beer or nonintoxicating craft beer is 21 years of age or over and that the patron is not visibly
31 intoxicated.

32 ~~(e)~~ (d) *Retail sales.* — Every licensee authorized under this section shall comply with all
33 the provisions of this article as applicable to nonintoxicating beer retailers when conducting sales

34 of nonintoxicating beer or nonintoxicating craft beer and ~~shall be~~ is subject to all applicable
35 requirements and penalties in this article.

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

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

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

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

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

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

68 ~~(j)~~ (k) *Limitations on licensees.* — A licensee under this section may only sell growlers
69 during the hours of operation set forth in §11-16-18(a)(1) of this code. Any licensee licensed under
70 this section must maintain a secure area for the sale of nonintoxicating beer or nonintoxicating
71 craft beer in a growler. The secure area must only be accessible by the licensee. Any licensee
72 licensed under this section ~~shall be~~ is subject to the applicable penalties under §11-16-23 of this
73 code for violations of this section.

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

79 ~~(l)~~ (m) *Rules.* — The commissioner ~~is authorized to~~ may propose rules for legislative
80 approval, pursuant to §29A-3-1 *et seq.* 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 may not exceed:~~

20 ~~(1) One separate and individual sample serving per brand, type and flavor per customer~~
21 ~~verified to be 21 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 21 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 21 years; or

34 (2) Intoxicated.

35 ~~(g) A nonintoxicating beer sampling event shall~~ (e) 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~~
43 ~~beer bottle or can is opened, then that nonintoxicating beer bottle or can must be removed from~~
44 ~~the licensed premises immediately following the event~~

45 ~~(i) (g)~~ Violations of this section are subject to the civil and criminal penalties set forth in
46 §11-16-18, §11-16-19, §11-16-20, §11-16-22, §11-16-23, §11-16-24, and §11-16-25 of this code;

47 ~~(j) (h)~~ To implement the provisions of this section, the commissioner may promulgate
48 emergency rules pursuant to the provisions of §29A-3-15 of this code or propose rules for
49 legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code.

§11-16-11b. Special license for one-day charitable events; license fee and application;
license subject to provisions of article; exceptions.

1 The commissioner may issue special one day licenses to be designated Class S1 licenses
2 for the retail sale of nonintoxicating beer to a duly organized nonprofit corporation, limited liability
3 entity or an association having received federal tax-exempt status, allowing the sale and serving

4 of nonintoxicating beer when raising money for artistic, athletic, charitable, educational or religious
5 purposes. One special license may be issued for a period no longer than one day. The license
6 application shall contain information the commissioner requires and shall be submitted to the
7 commissioner at least 15 days prior to the event. Nonintoxicating beer used during the event may
8 be donated by or purchased from a licensed retailer, distributor or resident brewer. The
9 commissioner may not charge a fee for a license under this section.

10 A license issued under the provisions of this section and the licensee holding the license
11 is subject to all other provisions of this article and the rules and orders of the commissioner relating
12 to the special license: *Provided*, That the commissioner may, by rule or order, allow waivers or
13 exceptions with respect to those provisions, rules or orders as the circumstances of each event
14 require, including, without limitation, the right to revoke or suspend any license issued pursuant
15 to this section prior to any notice or hearing notwithstanding the provisions of §11-16-24 of this
16 code: *Provided, however*, That under no circumstances may §11-16-18(a)(1), §11-16-18(a)(2) or
17 §11-16-18(a)(3) of this code be waived or an exception granted with respect thereto.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-27. Special license for one-day charitable events.

1 (a) The commissioner may issue special one day licenses for the use of alcoholic liquor
2 by a duly organized nonprofit corporation, limited liability entity or an association having received
3 federal tax-exempt status, allowing the sale and serving of alcoholic liquor when raising money
4 for artistic, athletic, charitable, educational or religious purposes. One special license may be
5 issued for a period no longer than one day. The license application shall contain:

6 (1) Proof that the licensee will have sufficient procedures in place that will prevent:

7 (A) The procurement of alcoholic liquors for or to, or permit the consumption of alcoholic
8 liquors on the licensee's premises, by any person less than 21 years of age; and

9 (B) The procurement of any alcoholic liquors, for or to any person known to be deemed
10 legally incompetent, or for or to any person who is physically incapacitated due to consumption
11 of nonintoxicating beer, wine or alcoholic liquor or the use of drugs; and

12 (2) Other information the commissioner requires.

13 (b) The application shall be submitted to the commissioner at least 15 days prior to the
14 event. Alcoholic liquor used during the event may be donated by or purchased from a licensed
15 retailer, distributor or a private club licensed under §60-7-1 et seq. of this code.

16 (c) A license issued under the provisions of this section and the licensee holding the
17 license is subject to all other provisions of this article and the rules and orders of the commissioner
18 relating to the special license: *Provided*, That the commissioner may, by rule or order, allow
19 waivers or exceptions with respect to those provisions, rules or orders as the circumstances of
20 each event require, including, without limitation, the right to revoke or suspend any license issued
21 pursuant to this section prior to any notice or hearing.

22 (d) The commissioner may not charge a fee for a license under this section.

23 (e) Pursuant to section 46, article VI of the West Virginia Constitution the license may not
24 authorize the sale of alcoholic liquors or consumption of alcoholic liquors in a public place.

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