

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3174**

4
5 (By Delegates Brown, Fragale, Moore and Skaff)

6 (Originating in the Committee on the Judiciary)

7
8 [February 15, 2012]

9
10 A BILL to amend and reenact §11-16-3 of the Code of West Virginia,
11 1931, as amended; to amend said code by adding thereto a new
12 section, designated §11-16-11a; to amend said code by adding
13 thereto a new section, designated §60-3A-3a; and to amend and
14 reenact §60-3A-4 of said code, all relating to allowing Class
15 A retail licensees the ability to conduct responsible
16 nonintoxicating beer and liquor sampling events; requiring
17 preapproval of the events by the ABCA commissioner;
18 establishing standards, limitations, and prohibitions to be
19 applied for the conduct of such events; definitions;
20 incorporating civil penalties for violations by reference;
21 criminal penalties for violations by reference; providing for
22 emergency rules; and defining terms.

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

24 That §11-16-3 of the Code of West Virginia, 1931, as amended,
25 be amended and reenacted; that said code be amended by adding
26 thereto a new section, designated §11-16-11a; that said code be

1 amended by adding thereto a new section, designated §60-3A-3a; and
2 that §60-3A-4 of said code be amended and reenacted, all to read as
3 follows:

4 **CHAPTER 11. TAXATION.**

5 **ARTICLE 16. NONINTOXICATING BEER.**

6 **§11-16-3. Definitions.**

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

9 (1) "Brewer" or "manufacturer" means any person, firm,
10 association, partnership or corporation manufacturing, brewing,
11 mixing, concocting, blending, bottling or otherwise producing or
12 importing or transshipping from a foreign country nonintoxicating
13 beer for sale at wholesale to any licensed distributor.

14 (2) "Brewpub" means a place of manufacture of nonintoxicating
15 beer owned by a resident brewer, subject to federal regulations and
16 guidelines, a portion of which premises are designated for retail
17 sales.

18 (3) "Class A retail license" means a retail license
19 permitting the retail sale of liquor at a freestanding liquor
20 retail outlet licensed pursuant to chapter sixty of this code.

21 (4) "Commissioner" means the West Virginia Alcohol Beverage
22 Control Commissioner.

23 ~~(4)~~(5) "Distributor" means and includes any person jobbing or
24 distributing nonintoxicating beer to retailers at wholesale and
25 whose warehouse and chief place of business shall be within this

1 state.

2 (6) "Freestanding liquor retail outlet" means a retail outlet
3 that sells only liquor, beer, nonintoxicating beer and other
4 alcohol-related products, as defined pursuant to section four,
5 article three-a, chapter sixty of this code.

6 ~~(5)~~(7) "Nonintoxicating beer" means all cereal malt beverages
7 or products of the brewing industry commonly referred to as beer,
8 lager beer, ale and all other mixtures and preparations produced by
9 the brewing industry, including malt coolers and nonintoxicating
10 craft beers containing at least one half of one percent alcohol by
11 volume, but not more than nine and six-tenths of alcohol by weight,
12 or twelve percent by volume, whichever is greater, all of which are
13 hereby declared to be nonintoxicating and the word "liquor" as used
14 in chapter sixty of this code shall not be construed to include or
15 embrace nonintoxicating beer nor any of the beverages, products,
16 mixtures or preparations included within this definition.

17 (8) "Nonintoxicating beer sampling event" means an event
18 approved by the commissioner for a Class A retail Licensee to hold
19 a nonintoxicating beer sampling authorized pursuant to section
20 eleven-a of this article.

21 (9) "Nonintoxicating beer sampling day" means any days and
22 hours of the week where Class A retail licensees may sell
23 nonintoxicating beer pursuant to sub-section (a)(1), section
24 eighteen of this article, and is approved, in writing, by the
25 commissioner to conduct a nonintoxicating beer sampling event.

26 ~~(6)~~(10) "Nonintoxicating craft beer" means any beverage

1 obtained by the fermentation of barley, malt, hops or any other
2 similar product or substitute and containing not less than one half
3 of one percent by volume and not more than twelve percent alcohol
4 by volume or nine and six-tenths percent alcohol by weight.

5 ~~(7)~~(11) "Original container" means the container used by the
6 brewer at the place of manufacturing, bottling or otherwise
7 producing nonintoxicating beer for sale at wholesale.

8 ~~(8)~~(12) "Person" means and includes an individual, firm,
9 partnership, limited partnership, association or corporation.

10 ~~(9)~~(13) "Resident brewer" means any person, firm, association,
11 partnership, or corporation whose principal place of business is
12 within the state.

13 ~~(10)~~(14) "Retailer" means any person selling, serving, or
14 otherwise dispensing nonintoxicating beer and all products
15 regulated by this article, including, but not limited to, any malt
16 cooler, at his or her established and licensed place of business.

17 ~~(11)~~(15) "Tax Commissioner" means the Tax Commissioner of the
18 State of West Virginia or the commissioner's designee.

19 **§11-16-11a. Nonintoxicating beer sampling.**

20 (a) Notwithstanding any provision of this code to the
21 contrary, a Class A retail licensee may, with the written approval
22 of the commissioner, conduct a nonintoxicating beer sampling event
23 on a designated nonintoxicating beer sampling day.

24 (b) At least five business days prior to the nonintoxicating
25 beer sampling, the Class A retail licensee shall submit a written

1 proposal to the commissioner requesting to hold a nonintoxicating
2 beer sampling event, including:

3 (1) The day of the event;

4 (2) the location of the event;

5 (3) The times for the event;

6 (4) The names of up to three specific brands, types and
7 flavors, if any, of the nonintoxicating beer to be sampled; and

8 (5) A statement indicating that all the nonintoxicating beer
9 brands have been registered and approved for sale in the state by
10 the commissioner.

11 (c) Upon approval by the commissioner, a Class A retail
12 licensee may serve the complimentary nonintoxicating beer samples
13 of the approved brands, types and flavors that are purchased by the
14 Class A retail licensee, with all taxes paid, from its inventory.

15 (d) The complimentary nonintoxicating beer sample on any
16 nonintoxicating beer sampling day shall not exceed:

17 (1) One separate and individual sample servings per brand,
18 type and flavor per customer verified to be twenty-one years of age
19 or older; and

20 (2) Two ounces in total volume per brand, type and flavor.

21 (e) Servers at the nonintoxicating beer sampling event shall:

22 (1) Be employees of the Class A retail licensee;

23 (2) Be at least twenty-one years of age or older; and

24 (3) Have specific knowledge of the nonintoxicating beer being
25 sampled to convey to the customer.

1 (f) All servers at the nonintoxicating beer sampling event
2 shall verify the age of the customer sampling nonintoxicating beer
3 by requiring and reviewing proper forms of identification. Servers
4 at the nonintoxicating beer event may not serve any person who is:

- 5 (1) Under the age of twenty-one years; or
- 6 (2) Intoxicated.

7 (g) A nonintoxicating beer sampling event shall:

- 8 (1) Occur only inside the Class A retail licensee's licensed
9 premises; and
- 10 (2) Cease on or before 9:00 p.m. on any approved
11 nonintoxicating beer sampling day.

12 (h) Any nonintoxicating beer bottle or can used for sampling
13 must be from the inventory of the licensee, and clearly and
14 conspicuously labeled "SAMPLE, NOT FOR RESALE". If the seal is
15 broken on any nonintoxicating beer bottle or can, or if any
16 nonintoxicating beer bottle or can is opened, then that
17 nonintoxicating beer bottle or can must be removed from the
18 licensed premises immediately following the event.

19 (i) Violations of this section are subject to the civil and
20 criminal penalties set forth in sections eighteen, nineteen,
21 twenty, twenty-two, twenty-three, twenty-four and twenty-five of
22 this article;

23 (j) To implement the provisions of this section, the
24 commissioner may promulgate emergency rules pursuant to the
25 provisions of section fifteen, article three, chapter twenty-nine-a
26 of this code or propose rules for legislative approval in

1 accordance with the provisions of article three, chapter twenty-
2 nine-a of this code.

3 **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS**

4 **ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

5 **§60-3A-3a. Liquor sampling.**

6 (a) Notwithstanding any provision of this code to the
7 contrary, a Class A retail licensee may, with the written approval
8 of the commissioner, conduct a liquor sampling event on a
9 designated sampling day.

10 (b) At least five business days prior to the liquor sampling,
11 the Class A retail licensee shall submit a written proposal to the
12 commissioner requesting to hold a liquor sampling event, including:

13 (1) The day of the event;

14 (2) the location of the event;

15 (3) The times for the event; and

16 (4) The specific brand and flavor of the West Virginia product
17 to be sampled.

18 (c) Upon approval by the commissioner, a Class A retail
19 licensee may serve a complimentary liquor sample of the approved
20 brand and flavor of the West Virginia product that is purchased by
21 the Class A retail licensee from the commissioner.

22 (d) The complimentary liquor samples on any sampling day shall
23 not exceed:

24 (1) One separate and individual sample serving per customer
25 verified to be twenty-one years of age or older; and

1 (2) One ounce in total volume.

2 (e) Servers at the liquor sampling event shall:

3 (1) Be employees of the Class A retail licensee;

4 (2) Be at least twenty-one years of age or older; and

5 (3) Have specific knowledge of the West Virginia product being
6 sampled to convey to the customer.

7 (f) All servers at the liquor sampling event shall verify the
8 age of the customer sampling liquor by requiring and reviewing
9 proper forms of identification. Servers at the liquor sampling
10 event may not serve any person who is:

11 (1) Under the age of twenty-one years;

12 (2) Intoxicated.

13 (g) A liquor sampling event shall:

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

16 (2) Cease on or before 9:00 p.m. on any approved sampling day.

17 (h) Any liquor bottle used for sampling must be from the
18 inventory of the licensee, and clearly and conspicuously labeled
19 "SAMPLE, NOT FOR RESALE". If the seal is broken on any liquor
20 bottle or if any liquor bottle is opened, then that liquor bottle
21 must be removed from the licensed premises immediately following
22 the event.

23 (i) Violations of this section are subject to the civil and
24 criminal penalties set forth in sections twenty-four, twenty-five-
25 a, twenty-six and twenty-seven of this article;

1 (j) To implement the provisions of this section, the
2 commissioner may promulgate emergency rules pursuant to the
3 provisions of section fifteen, article three, chapter twenty-nine-a
4 of this code or propose rules for legislative approval in
5 accordance with the provisions of article three, chapter twenty-
6 nine-a of this code.

7 **§60-3A-4. Definitions.**

8 (a) "Active retail license" means a current license for a
9 retail outlet that has been open and in continuous operation for a
10 period of not less than twelve months prior to July 1, 2010, or
11 July 1 every ten years thereafter.

12 (b) "Active retail licensee" means a person who holds an
13 active retail license at the time of the effective date of the
14 amendments to this section during the first extraordinary session
15 of the Legislature in 2009 or that person's successor or any person
16 who holds an active retail license when it expires at the end of a
17 ten-year period.

18 (c) "Applicant" means any person who elects to pay a purchase
19 option for a Class A retail license, who bids for a retail license
20 or who seeks the commissioner's approval to purchase or otherwise
21 acquire a retail license from a retail licensee, in accordance with
22 the provisions of this article.

23 (d) "Application" means the form prescribed by the
24 commissioner which must be filed with the commissioner by any
25 person bidding for a retail license.

1 (e) "Board" means the Retail Liquor Licensing Board created by
2 this article.

3 (f) "Class A retail license" means a retail license permitting
4 the retail sale of liquor at a freestanding liquor retail outlet.

5 (g) "Class B retail license" means a retail license permitting
6 the sale of liquor at a mixed retail liquor outlet.

7 (h) "Current retail licensee" means a person who holds a
8 retail license at the time of the effective date of the amendments
9 to this section during the first extraordinary session of the
10 Legislature in 2009 or that person's successor or any person who
11 holds a retail license when it expires at the end of a ten-year
12 period.

13 (i) "Designated areas" means one or more geographic areas
14 within a market zone designated as such by the board.

15 (j) "Executive officer" means the president or other principal
16 officer, partner or member of an applicant or retail licensee, any
17 vice president or other principal officer, partner or member of an
18 applicant or retail licensee in charge of a principal business unit
19 or division, or any other officer, partner or member of an
20 applicant or retail licensee who performs a policy-making function.

21 (k) "Freestanding liquor retail outlet" means a retail outlet
22 that sells only liquor, beer, nonintoxicating beer and other
23 alcohol-related products, including tobacco-related products.

24 (l) "Liquor" means alcoholic liquor as defined in section
25 five, article one of this chapter and also includes both wine and

1 fortified wines as those terms are defined in section two, article
2 eight of this chapter.

3 (m) "Liquor sampling event" means an event approved by the
4 commissioner, for a Class A retail licensee to hold a liquor
5 sampling authorized pursuant to section three-a of this article.

6 ~~(m)~~ (n) "Market zone" means a geographic area designated as
7 such by the board for the purpose of issuing retail licenses.

8 ~~(n)~~ (o) "Mixed retail liquor outlet" means a retail outlet
9 that sells liquor, beer, nonintoxicating beer and other
10 alcohol-related products, including tobacco-related products, in
11 addition to convenience and other retail products.

12 ~~(o)~~ (p) "Person" means an individual, firm, corporation,
13 association, partnership, limited partnership, limited liability
14 company or other entity, regardless of its form, structure or
15 nature.

16 ~~(p)~~ (q) "Retail license" means a license issued under the
17 provisions of this article permitting the sale of liquor at retail.

18 ~~(q)~~ (r) "Retail licensee" means the holder of a retail
19 license.

20 ~~(r)~~ (s) "Retail outlet" means a specific location where liquor
21 may be lawfully sold by a retail licensee under the provisions of
22 this article.

23 (t) "Sampling day" means any days and hours of the week where
24 retail licensees may sell liquor pursuant to section eighteen,
25 article three-a, chapter sixty of this code for a Class A retail
26 licensee to conduct a liquor sampling event.

1 (u) "West Virginia product" means all liquor types and classes
2 as approved by the commissioner and maintained on the ABCA retail
3 liquor product list.