

1 **ENROLLED**

2 **H. B. 2956**

3
4 (By Delegates Miley, Boggs, Manchin, Marcum,
5 Ferro, Reynolds and Ashley)

6
7 [Passed April 13, 2013; in effect ninety days from passage.]
8
9

10 AN ACT to amend and reenact §11-16-3 and §11-16-6 of the Code of
11 West Virginia, 1931, as amended, all relating to
12 nonintoxicating beer distributorships and their licenses,
13 resident brewers and brewpubs; expanding the definition of
14 "person" for purposes of holding a nonintoxicating beer
15 distributorship; allowing individuals, forms, trusts,
16 partnerships, limited partnerships, limited liability
17 companies, associations and corporations to hold a
18 distributor's license; clarifying and amending applicable
19 definitions; clarifying certain requirements and operations
20 relating to distribution and sales at brewpubs; allowing for
21 the limited sale of nonintoxicating beer and nonintoxicating
22 craft beer by brewpubs for personal consumption off premises
23 and not for resale; amending definition of resident brewers;
24 placing limit on amount of non-intoxicating beer and non-
25 intoxicating craft beer that a resident brewer may self-

1 distribute; prohibiting addition or infusion of non-
2 intoxicating beer or non-intoxicating craft beer with caffeine
3 or any additives masking or altering alcohol effect.

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

5 That §11-16-3 and §11-16-6 of the Code of West Virginia, 1931,
6 as amended, be amended and reenacted, all to read as follows:

7 **ARTICLE 16. NONINTOXICATING BEER.**

8 **§11-16-3. Definitions.**

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

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

17 (2) "Brewpub" means a place of manufacture of nonintoxicating
18 beer owned by a resident brewer, subject to federal and state
19 regulations and guidelines, a portion of which premises are
20 designated for retail sales of nonintoxicating beer or
21 nonintoxicating craft beer by the resident brewer owning the
22 brewpub.

23 (3) "Class A retail license" means a retail license permitting
24 the retail sale of liquor at a freestanding liquor retail outlet

1 licensed pursuant to chapter sixty of this code.

2 (4) "Commissioner" means the West Virginia Alcohol Beverage
3 Control Commissioner.

4 (5) "Distributor" means and includes any person jobbing or
5 distributing nonintoxicating beer or nonintoxicating craft beer to
6 retailers at wholesale and whose warehouse and chief place of
7 business shall be within this state. For purposes of a distributor
8 only, the term "person" means and includes an individual, firm,
9 trust, partnership, limited partnership, limited liability company,
10 association or corporation. Any trust licensed as a distributor or
11 any trust that is an owner of a distributor licensee, and the
12 trustee or other persons in active control of the activities of the
13 trust relating to the distributor license, is liable for acts of
14 the trust or its beneficiaries relating to the distributor license
15 that are unlawful acts or violations of article eleven of this
16 chapter notwithstanding the liability of trustees in article ten,
17 chapter forty-four-d of this code.

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

22 (7) "Growler" means a glass ceramic or metal container or jug,
23 capable of being securely sealed, utilized by a brewpub for
24 purposes of off-premise sales of nonintoxicating beer or

1 nonintoxicating craft beer for personal consumption not on a
2 licensed premise and not for resale.

3 (8) "Nonintoxicating beer" means all natural cereal malt
4 beverages or products of the brewing industry commonly referred to
5 as beer, lager beer, ale and all other mixtures and preparations
6 produced by the brewing industry, including malt coolers and
7 nonintoxicating craft beers with no caffeine infusion or any
8 additives masking or altering the alcohol effect containing at
9 least one half of one percent alcohol by volume, but not more than
10 nine and six-tenths of alcohol by weight, or twelve percent by
11 volume, whichever is greater. The word "liquor" as used in chapter
12 sixty of this code does not include or embrace nonintoxicating beer
13 nor any of the beverages, products, mixtures or preparations
14 included within this definition.

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

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

24 (11) "Nonintoxicating craft beer" means any beverage obtained

1 by the natural 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 with no
5 caffeine infusion or any additives masking or altering the alcohol
6 effect.

7 (12) "Original container" means the container used by the
8 brewer at the place of manufacturing, bottling or otherwise
9 producing nonintoxicating beer for sale at wholesale.

10 (13) "Person" means and includes an individual, firm,
11 partnership, limited partnership, limited liability company,
12 association or corporation.

13 (14) "Resident brewer" means any brewer or manufacturer of
14 non-intoxicating beer or non-intoxicating craft beer whose
15 principal place of business and manufacture is located in the State
16 of West Virginia and which does not brew or manufacture more than
17 25,000 barrels of non-intoxicating beer or non-intoxicating craft
18 beer annually, and does not self-distribute more than 10,000
19 barrels thereof in the State of West Virginia annually.

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

24 (16) "Tax Commissioner" means the Tax Commissioner of the

1 State of West Virginia or the commissioner's designee.

2 **§11-16-6. License in one capacity only; no connection between**
3 **different licensees; when brewer may act as distributor;**
4 **credit and rebates proscribed; brewpub.**

5 (a) No person shall be licensed in more than one capacity
6 under the terms of this article, and there shall be no connection
7 whatsoever between any retailer, distributor, resident brewer or
8 brewer, and no person shall be interested directly or indirectly
9 through the ownership of corporate stock, membership in a
10 partnership, or in any other way in the business of a retailer, if
11 such person is at the same time interested in the business of a
12 brewer, resident brewer or distributor. A resident brewer may act
13 as distributor in a limited capacity for his or her own product
14 from such resident brewery, place of manufacture or bottling, but
15 a resident brewer is not permitted to act as a distributor as
16 defined in section three of this article: *Provided*, That nothing in
17 this article may prevent a resident brewer from using the services
18 of licensed distributors as specified in this article. A resident
19 brewer or distributor may sell to a consumer for personal use and
20 not for resale, draught beer in quantities of one-eighth, one-
21 fourth and one-half barrels in the original containers. A resident
22 brewer owning a brewpub may sell nonintoxicating beer or
23 nonintoxicating craft beer produced by the brewpub in a sealed

1 growler, cans or bottles for personal consumption off of a licensed
2 premise and not for resale.

3 (b) It is unlawful for any brewer, resident brewer,
4 manufacturer or distributor to assist any retailer or for any
5 retailer to accept assistance from any brewer, manufacturer or
6 distributor any gifts or loans or forbearance of money or property
7 of any kind, nature or description, or other thing of value or by
8 the giving of any rebates or discounts of any kind whatsoever
9 except as may be permitted by rule, regulation, or order
10 promulgated by the commissioner in accordance with this article.

11 Notwithstanding paragraphs (a) and (b) above, a brewpub may
12 offer for retail sale nonintoxicating beer or nonintoxicating craft
13 beer so long as the sale of the nonintoxicating beer or
14 nonintoxicating craft beer is limited to the brewpub premises,
15 except for up to two growlers per customer for personal consumption
16 off of a licensed premises and not for resale.