

ENROLLED  
COMMITTEE SUBSTITUTE  
FOR  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 273**

(By Senators Cole (Mr. President) and Kessler,  
By Request of the Executive)

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[Passed March 14, 2015; in effect ninety days from passage.]

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AN ACT to amend and reenact §11-16-3, §11-16-6, §11-16-9 and §11-16-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §11-16-6a and §11-16-6b, all relating to brewer, resident brewer, brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee and Class B retail licensee licensing and operations; clarifying, adding and revising definitions; providing legislative findings; authorizing licensed brewers and resident brewers to offer complimentary nonintoxicating beer and nonintoxicating craft beer samples; authorizing licensed brewers, resident brewers, brewpubs, Class A retail dealers, Class B retail dealers, private clubs, Class A retail licensees and Class B retail licensees to sell nonintoxicating beer and nonintoxicating craft beer in growlers subject to limitations; imposing operational,

advertising, sanitation, sealing and labeling standards; authorizing and imposing penalties; authorizing promulgation of rules; clarifying and imposing license requirements and fees; removing authorization to propose rules; changing license fee schedule for certain brewers and resident brewers; decreasing license fee for brewpubs; requiring annual production report; providing for fee correction; authorizing penalty for failure to submit production report; removing brewpub bonding requirement; and providing clarifying and technical amendments.

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

That §11-16-3, §11-16-6, §11-16-9 and §11-16-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §11-16-6a and §11-16-6b, all to read as follows:

**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, concocted,  
3 blended, bottled or otherwise produced, or imported or transhipped by a brewer or manufacturer, the  
4 labels of which have been registered and approved by the commissioner that is being offered for sale  
5 or sold in West Virginia by a distributor who has been appointed in a valid franchise agreement or  
6 a valid amendment thereto.

7 (2) "Brewer" or "manufacturer" means any person manufacturing, otherwise producing or  
8 importing or transhipping nonintoxicating beer or nonintoxicating craft beer for sale at wholesale  
9 to any licensed distributor. Brewer or manufacturer may be used interchangeably throughout this

1 article. A brewer may obtain only one brewer's license for its nonintoxicating beer or nonintoxicating  
2 craft beer.

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

7 (4) "Class A retail license" means a retail license permitting the retail sale of liquor at a  
8 freestanding liquor retail outlet licensed pursuant to chapter sixty of this code.

9 (5) "Class B retail license" means a retail license permitting the retail sale of liquor at a  
10 mixed retail liquor outlet licensed pursuant to chapter sixty of this code.

11 (6) "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner.

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

21 (8) "Franchise agreement" means the written agreement between a brewer and a distributor

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

16 (9) "Franchise distributor network" means the distributors who have entered into a binding  
17 written franchise agreement, identical as to terms and conditions, to distribute nonintoxicating beer  
18 products, brands and line extensions in an assigned territory for a brewer. A brewer may only have  
19 one franchise distributor network: *Provided*, That a brewer that has acquired the manufacturing,  
20 bottling or other production rights for the sale of nonintoxicating beer at wholesale from a selling  
21 brewer as specified in subdivision (2), subsection (a), section twenty-one of this article shall continue  
22 to maintain and be bound by the selling brewer's separate franchise distributor's network for any of

1 its existing brands, line extensions and new brands.

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

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

17 (12) "Line extension" means any nonintoxicating beer product that is an extension of brand  
18 or family of brands that is labeled, branded, advertised, marketed, promoted or offered for sale with  
19 the intent or purpose of being manufactured, imported, associated, contracted, affiliated or otherwise  
20 related to a brewer's existing brand through the use of a brewer, its subsidiaries, parent entities,  
21 contracted entities, affiliated entities or other related entities. In determining whether a

1 nonintoxicating beer product is a line extension, the commissioner may consider, but is not limited  
2 to, the following factors: Name or partial name; trade name or partial trade name; logos; copyrights;  
3 trademarks or trade design; product codes; advertising promotion or pricing.

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

12 (14) "Nonintoxicating beer sampling event" means an event approved by the commissioner  
13 for a Class A retail licensee to hold a nonintoxicating beer sampling authorized pursuant to section  
14 eleven-a of this article.

15 (15) "Nonintoxicating beer sampling day" means any days and hours of the week where Class  
16 A retail licensees may sell nonintoxicating beer pursuant to section eleven-a and subdivision (1),  
17 subsection (a), section eighteen of this article, and is approved, in writing, by the commissioner to  
18 conduct a nonintoxicating beer sampling event.

19 (16) "Nonintoxicating craft beer" means any beverage obtained by the natural fermentation  
20 of barley, malt, hops or any other similar product or substitute and containing not less than one half  
21 of one percent by volume and not more than twelve percent alcohol by volume or nine and six-tenths

1 percent alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol  
2 effect.

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

6 (18) "Person" means and includes an individual, firm, partnership, limited partnership,  
7 limited liability company, association or corporation.

8 (19) "Private club" means a license issued pursuant to article seven, chapter sixty of this  
9 code.

10 (20) "Resident brewer" means any brewer or manufacturer of nonintoxicating beer or  
11 nonintoxicating craft beer whose principal place of business and manufacture is located in the state  
12 of West Virginia and which does not brew or manufacture more than twenty-five thousand barrels  
13 of nonintoxicating beer or nonintoxicating craft beer annually, and does not self-distribute more than  
14 ten thousand barrels thereof in the state of West Virginia annually.

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

18 (22) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or the  
19 commissioner's designee.

20 **§11-16-6. License in one capacity only; no connection between different licensees; when**  
21 **brewer may act as distributor; credit and rebates proscribed; brewer, resident**

1                   **brewer and brewpub requirements.**

2                   (a) No person shall be licensed in more than one capacity under the terms of this article, and  
3 there shall be no connection whatsoever between any retailer, distributor, resident brewer or brewer,  
4 and no person shall be interested, directly or indirectly, through the ownership of corporate stock,  
5 membership in a partnership, or in any other way in the business of a retailer, if such person is at the  
6 same time interested in the business of a brewer, resident brewer or distributor. A resident brewer  
7 may act as distributor in a limited capacity for his or her own product from such resident brewery,  
8 place of manufacture or bottling, but a resident brewer is not permitted to act as a distributor as  
9 defined in section three of this article: *Provided*, That nothing in this article may prevent a resident  
10 brewer from using the services of licensed distributors as specified in this article. A resident brewer  
11 or distributor may sell to a patron for personal use and not for resale quantities of draught beer in  
12 original containers that are no larger in size than one-half barrel for off-premises consumption. A  
13 resident brewer who also has a brewpub license may sell nonintoxicating beer or nonintoxicating  
14 craft beer produced by the resident brewer in cans, bottles or sealed growlers, pursuant to section six-  
15 b of this article, for personal consumption off of the brewpub’s licensed premises and not for resale.

16                   (b) It is unlawful for any brewer, resident brewer, manufacturer or distributor to assist any  
17 retailer or for any retailer to accept assistance from any brewer, manufacturer or distributor, accept  
18 any gifts, loans, forbearance of money or property of any kind, nature or description, or other thing  
19 of value, or give any rebates or discounts of any kind whatsoever, except as may be permitted by  
20 rule, regulation or order promulgated by the commissioner in accordance with this article.

21                   (c) Notwithstanding subsections (a) and (b) of this section, a brewpub may offer for retail sale  
22 nonintoxicating beer or nonintoxicating craft beer so long as the sale of the nonintoxicating beer or

1 nonintoxicating craft beer is limited to the brewpub’s licensed premises, except as provided in  
2 section six-b of this article.

3 **§11-16-6a. Brewer and resident brewer license to manufacture, sell and provide**  
4 **complimentary samples.**

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

15 (b) *Sales of nonintoxicating beer.* -- A licensed brewer or resident brewer with its principal  
16 place of business and manufacture located in the state of West Virginia may offer only  
17 nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident  
18 brewer for retail sale to customers from the brewer’s or resident brewer’s licensed premises for  
19 consumption off the licensed premises only in the form of kegs, bottles, cans or growlers for personal  
20 consumption and not for resale. A licensed brewer or resident brewer may not sell, give or furnish  
21 nonintoxicating beer for consumption on the premises of the principal place of business and  
22 manufacture located in the state of West Virginia, except for the limited purpose of complimentary

1 samples as permitted in subsection (c) of this section.

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

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

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

20 (f) *Advertising.* -- A licensed brewer or resident brewer under this section may advertise a  
21 particular brand or brands of nonintoxicating beer or nonintoxicating craft beer produced by the  
22 licensed brewer or resident brewer and the price of the nonintoxicating beer or nonintoxicating craft

1 beer subject to state and federal requirements or restrictions. The advertisement may not encourage  
2 intemperance.

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

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

20 (i) *Growler sanitation.* -- A licensed brewer or resident brewer authorized under this section  
21 shall clean and sanitize all growlers he or she fills or refills in accordance with all state and county  
22 health requirements prior to its sealing. In addition, the licensed brewer or resident brewer shall

1 sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines,  
2 barrel tubes and any other related equipment used to fill or refill growlers. Failure to comply with  
3 this subsection may result in penalties under section twenty-three of this article.

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

6 (k) *Limitations on licensees.* -- To be authorized under this section, a licensed brewer or  
7 resident brewer may not produce more than twenty-five thousand barrels per calendar year at the  
8 brewer's or resident brewer's principal place of business and manufacture located in the state of  
9 West Virginia. No more than one brewer or resident brewer license may be issued to a single person  
10 or entity and no person may hold both a brewer and a resident brewer license. A licensed brewer or  
11 resident brewer under this section may only conduct tours, give complimentary samples and sell  
12 growlers during the hours of operation set forth in subdivision (1), subsection (a), section eighteen  
13 of this article. A licensed brewer or resident brewer authorized under this section shall be subject  
14 to the applicable penalties under section twenty-three of this article for violations of this section.

15 (l) *Rules.* -- The commissioner, in consultation with the Bureau for Public Health concerning  
16 sanitation, is authorized to propose rules for legislative approval, pursuant to article three, chapter  
17 twenty-nine-a of this code, to implement this section.

18 **§11-16-6b. Brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail**  
19 **licensee and Class B retail licensee's authority to sell growlers.**

20 (a) *Legislative findings.* -- The Legislature hereby finds that it is in the public interest to  
21 regulate, control and support the brewing, manufacturing, distribution, sale, consumption,  
22 transportation and storage of nonintoxicating beer and nonintoxicating craft beer and its industry in

1 this state in order to protect the public health, welfare and safety of the citizens of this state and  
2 promote hospitality and tourism. Therefore, this section authorizes a licensed brewpub, Class A  
3 retail dealer, Class B retail dealer, private club, Class A retail licensee or Class B retail licensee to  
4 have certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft  
5 beer manufactured in this state for the benefit of the citizens of this state, the state's growing brewing  
6 industry and the state's hospitality and tourism industry, all of which are vital components for the  
7 state's economy.

8 (b) *Sales of nonintoxicating beer.* -- A licensed brewpub, Class A retail dealer, Class B retail  
9 dealer, private club, Class A retail licensee or Class B retail licensee who pays the fee in subsection  
10 (i) of this section and meets the requirements of this section may offer nonintoxicating beer or  
11 nonintoxicating craft beer for retail sale to patrons from their licensed premises in a growler for  
12 personal consumption only off of the licensed premises and not for resale. Prior to the sale, the  
13 licensee shall verify, using proper identification, that any patron purchasing nonintoxicating beer or  
14 nonintoxicating craft beer is twenty-one years of age or over and that the patron is not visibly  
15 intoxicated. A licensee authorized under this section may not sell, give or furnish alcoholic liquors,  
16 including wine, for consumption off of its licensed premises, unless it is a private club licensed to  
17 sell sealed wine for consumption off of the licensed premises and meets the requirements set out in  
18 subdivisions (j) and (l), section three, article eight, chapter sixty of this code, for the sale of wine,  
19 not liquor.

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

1 and penalties in this article.

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

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

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

19 (g) *Growler labeling.* -- A licensee authorized under this section selling growlers shall affix  
20 a conspicuous label on all sold and securely sealed growlers listing the name of the licensee selling  
21 the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer in the growler, the  
22 alcohol content by volume of the nonintoxicating beer or nonintoxicating craft beer in the growler

1 and the date the growler was filled or refilled, and, further, all labeling on the growler shall be  
2 consistent with all federal labeling and warning requirements.

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

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

12 (j) *Limitations on licensees.* -- A licensee under this section may only sell growlers during  
13 the hours of operation set forth in subdivision (1), subsection (a), section eighteen of this article.  
14 Any licensee licensed under this section must maintain a secure area for the sale of nonintoxicating  
15 beer or nonintoxicating craft beer in a growler. The secure area must only be accessible by the  
16 licensee. Any licensee licensed under this section shall be subject to the applicable penalties under  
17 section twenty-three of this article for violations of this section.

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

1 (l) *Rules.* -- The commissioner is authorized to propose rules for legislative approval,  
2 pursuant to article three, chapter twenty-nine-a of this code, to implement this section.

3 **§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of**  
4 **nonintoxicating beer permitted; distributors; brewers; brewpubs.**

5 (a) All retail dealers, distributors, brewpubs, brewers and resident brewers of nonintoxicating  
6 beer and of nonintoxicating craft beer shall pay an annual fee to maintain an active license as  
7 required by this article. The license period begins on July 1 of each year and ends on June 30 of the  
8 following year. If the license is granted for a shorter period, then the license fee shall be computed  
9 semiannually in proportion to the remainder of the fiscal year.

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

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

12 (A) For a Class A retail dealer, the license fee is \$150 for each place of business; the license  
13 fee for social, fraternal or private clubs not operating for profit, and having been in continuous  
14 operation for two years or more immediately preceding the date of application, is \$150: *Provided,*  
15 That railroads operating in this state may dispense nonintoxicating beer upon payment of an annual  
16 license tax of \$10 for each dining, club or buffet car in which the beer is dispensed.

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

21 (B) For a Class B retail dealer, the license fee, authorizing the sale of both chilled and  
22 unchilled beer, is \$150 for each place of business. A Class B license authorizes the licensee to sell

1 nonintoxicating beer at retail in bottles, cans or other sealed containers only, and only for  
2 consumption off the licensed premises. A Class B retailer may sell to a patron, for personal use and  
3 not for resale, quantities of draught beer in original containers that are no larger in size than one-half  
4 barrel for off-premises consumption.

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

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

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

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

17 (B) Twelve thousand five hundred one barrels and up to twenty-five thousand barrels of  
18 nonintoxicating beer or nonintoxicating craft beer, the license fee is \$1,000 for each place of  
19 manufacture;

20 (C) More than twenty-five thousand one barrels of nonintoxicating beer or nonintoxicating  
21 craft beer, the license fee is \$1,500 for each place of manufacture.

22 (4) For a brewer whose principal place of business or manufacture is not located in this state,

1 the license fee is \$1,500. The brewer is exempt from the requirements set out in subsections (c), (d)  
2 and (e) of this section: *Provided*, That a brewer whose principal place of business or manufacture  
3 is not located in this state that produces less than twenty-five thousand barrels of nonintoxicating  
4 beer or nonintoxicating craft beer may choose to apply in writing to the commissioner to be subject  
5 to the variable license fees of subdivision (3), subsection (b) of this section and the requirements set  
6 out in subsections (c), (d) and (e) of this section subject to investigation and approval by the  
7 commissioner as to brewer requirements.

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

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

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

19 (e) If the actual total production of nonintoxicating beer or nonintoxicating craft beer by the  
20 brewer or resident brewer exceeded the brewer's or resident brewer's estimate that was filed with  
21 the application or renewal for a brewer's or resident brewer's license for that period, then the brewer  
22 or resident brewer shall include a remittance for the balance of the license fee pursuant to this section

1 that would be required for the final, higher level of production.

2 (f) Any brewer or resident brewer failing to file the reports required in subsections (c) and  
3 (d) of this section, and who is not exempt from the reporting requirements, shall, at the discretion  
4 of the commissioner, be subject to the penalties set forth in section twenty-three of this article.

5 **§11-16-12. Bond of brewer, distributor and Class A retail dealer; action on bond of retail**  
6 **dealer upon revocation of license; duty of prosecuting attorney.**

7 (a) In addition to furnishing the information required by this article, each brewer or  
8 distributor applying for a license under this article shall furnish, as prerequisite to a license, a bond  
9 with some solvent surety company as surety, to be approved by the commissioner, payable to the  
10 state of West Virginia, conditioned for the payment of any and all additional taxes accruing during  
11 the period of such license, and conditioned further for the faithful observance of the provisions of  
12 this article, the rules, regulations and orders promulgated pursuant thereto and of any other laws of  
13 the state of West Virginia generally relating to the sale, transportation, storage and distribution of  
14 nonintoxicating beer, which said bonds shall be forfeited to the state upon the revocation of the  
15 license of any such brewer or distributor. The amount of such bond in the case of a resident brewer  
16 or brewpub shall be not less than \$5,000 nor more than \$10,000 and in the case of a distributor, not  
17 less than \$2,000 nor more than \$5,000 for each place of business licensed and conducted within the  
18 state, the amount of such bond, between the minimum and maximum amounts, to be determined in  
19 the discretion of the commissioner. There shall be no bond for a brewpub license, as the license  
20 privilege itself secures the payment of taxes and is subject to suspension and revocation for failure  
21 to pay said taxes. In the case of brewers shipping nonintoxicating beer into the state, any brewer  
22 must also furnish a bond in a penalty of not less than \$5,000 nor more than \$25,000 conditioned as

1 hereinabove in this subsection provided and any bond furnished pursuant hereto shall be forfeited  
2 to the state in the full amount of said bond upon revocation of license of any such brewer or  
3 distributor. Such money received by the state shall be credited to the State Fund, General Revenue.

4 (b) Each Class A retail dealer, in addition to furnishing the information required by this  
5 article, shall furnish, as prerequisite to obtaining a license, a bond with some solvent surety company  
6 as surety, to be approved by the commissioner, payable to the state of West Virginia, in the amount  
7 not less than \$500 nor more than \$1000 within the discretion of the commissioner. All such bonds  
8 shall be conditioned for the faithful observance of the provisions of this article, the rules, regulations  
9 and orders promulgated pursuant thereto and of any other laws of the state of West Virginia generally  
10 relating to the distribution, sale and dispensing of nonintoxicating beer and shall be forfeited to the  
11 state in the full amount of said bond upon the revocation of the license of any such retail dealer.  
12 Such money received by the state shall be credited to the State Fund, General Revenue.

13 (c) Upon the revocation of the license of any Class A retail dealer by the commissioner or by  
14 any court of competent jurisdiction, the commissioner or the clerk of said court shall notify the  
15 prosecuting attorney of the county wherein such retail dealer's place of business is located, or the  
16 prosecuting attorney of the county wherein the licensee resides, of such revocation, and, upon receipt  
17 of said notice, it shall be the duty of such prosecuting attorney forthwith to institute appropriate  
18 proceedings for the collection of the full amount of said bond. Upon request of such prosecuting  
19 attorney, the commissioner shall deliver the bond to him. Willful refusal without just cause therefor  
20 by the prosecuting attorney to perform said duty hereby imposed shall subject him to removal from  
21 office by the circuit court of the county for which said prosecuting attorney was elected upon proper  
22 proceedings and proof in the manner provided by law.