

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 251

BY SENATOR TRUMP

[Introduced January 13, 2016;

Referred to the Committee on Economic Development;

and then to the Committee on the Judiciary.]

1 A BILL to amend and reenact §11-16-6, §11-16-6a, §11-16-6b, §11-16-8, §11-16-9, §11-16-11
 2 and §11-16-18 of the Code of West Virginia, 1931, as amended, all relating to
 3 nonintoxicating beer; brewers and brewpubs; residency requirements for brewer's license
 4 and distributor's license; authorizing combined license for brewers and brewpubs; growler
 5 requirements and increasing daily number of growlers sold to customers; permitting
 6 multiple licenses to individuals and the operation of a brewery, winery or distillery by the
 7 same company or individual; eliminating festival fees and allowing breweries, wineries and
 8 distilleries to attend same festival events; eliminating Sunday sale restriction for brewers
 9 and brewpubs; removing food inventory requirement for retail package stores and wine
 10 specialty stores; providing that licenses are valid for one year from date of issue instead
 11 of being based on fiscal year; and permitting brewers to make their own analysis of the
 12 alcohol contents of their products and gravity readings.

Be it enacted by the Legislature of West Virginia:

1 That §11-16-6, §11-16-6a, §11-16-6b, §11-16-8, §11-16-9, §11-16-11 and §11-16-18 of
 2 the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

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

1 (a) No person shall may be licensed in more than one capacity under the terms of this
 2 article, and there shall may be no connection ~~whatsoever~~ between any retailer, distributor,
 3 resident brewer or brewer, except as provided by this section, and no person shall may be
 4 interested, directly or indirectly, through the ownership of corporate stock, membership in a
 5 partnership, or in any other way in the business of a retailer, if such person is at the same time
 6 interested in the business of a brewer, resident brewer or distributor, except as provided by this
 7 section. A resident brewer whose place of brewing or manufacture is located within the State of

8 West Virginia may act as distributor ~~in a limited capacity~~ for his or her own product from such
9 ~~resident~~ the brewery, place of manufacture or bottling, but ~~a resident brewer is not permitted to~~
10 ~~act as a distributor as defined in section three of this article: *Provided, That nothing in this article*~~
11 ~~may prevent a resident brewer from using the services of licensed distributors as specified in this~~
12 ~~article~~ must have a distributor's license for distribution from a place other than the place of brewing
13 or manufacture. A resident brewer or distributor may sell to a ~~patron~~ consumer for personal use
14 and not for resale ~~quantities of draught beer in original containers that are no larger in size than~~
15 ~~one-half barrel for off-premises consumption~~ draught beer in quantities of one-eighth, one-fourth
16 and one-half barrels in the original containers. A resident brewer who also has a brewpub license
17 may sell nonintoxicating beer or nonintoxicating craft beer produced by the resident brewer in
18 cans, bottles or sealed growlers, pursuant to section six-b of this article, for personal consumption
19 off of the brewpub=s licensed premises and not for resale.

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

26 (c) Notwithstanding subsections (a) and (b) of this section, a brewpub may offer for retail
27 sale nonintoxicating beer or nonintoxicating craft beer so long as the sale of the nonintoxicating
28 beer or nonintoxicating craft beer is limited to the brewpub=s licensed premises, except as
29 provided in section six-b of this article.

30 (d) Notwithstanding any other provision of this code to the contrary, any person who is at
31 the same time interested in the business of a brewer, resident brewer or distributor, winery, farm
32 winery, supplier, distributor, retailer, private wine, bed and breakfast, private wine restaurant,

33 private wine spa or wine specialty shop (as defined in article eight, chapter sixty of this code),
34 distillery or mini-distillery (as defined in article four, chapter sixty of this code), may operate under
35 the same business or company name, whether as an individual or other legal entity.

§11-16-6a. Brewer and resident brewer license to manufacture, sell 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,
5 and promote hospitality and tourism. Therefore, this section authorizes a licensed brewer or
6 resident brewer with its principal place of business and manufacture located in this state to have
7 certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer
8 manufactured in this state for the benefit of the citizens of this state, the state=s growing brewing
9 industry and the state=s hospitality and tourism industry, all of which are vital components for the
10 state=s economy.

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

20 (c) *Complimentary samples.* -- A licensed brewer or resident brewer with its principal place

21 of business and manufacture located in the State of West Virginia may only offer complimentary
22 samples of nonintoxicating beer or nonintoxicating craft beer brewed at the brewer=s or resident
23 brewer=s principal place of business and manufacture located in the State of West Virginia. The
24 complimentary samples may be no greater than two ounces per sample per patron, and a
25 sampling shall not exceed ten complimentary two-ounce samples per patron per day. A licensed
26 brewer or resident brewer providing complimentary samples shall provide complimentary food
27 items to the patron consuming the complimentary samples; and prior to any sampling, verify,
28 using proper identification, that the patron sampling is twenty-one years of age or over and that
29 the patron is not visibly intoxicated.

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

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

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

43 (g) *Growler requirements.* -- A licensed brewer or resident brewer under this section must
44 fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensed
45 brewer or resident brewer under this section must sanitize, fill, securely seal and label any growler

46 prior to its sale. A licensed brewer or resident brewer under this section may only offer for retail
47 sale up to ~~two~~ ten 64-ounce, or ~~four~~ twenty 32-ounce, growlers of nonintoxicating beer or
48 nonintoxicating craft beer manufactured by the licensed brewer or resident brewer per customer
49 per day for personal consumption off of the licensed premises and not for resale. A licensed
50 brewer or resident brewer under this section may refill a growler subject to the requirements of
51 this section. A licensed brewer or resident brewer shall visually inspect any growler before filling
52 or refilling it. A licensed brewer or resident brewer may not fill or refill any growler that appears to
53 be cracked, broken, unsafe or otherwise unfit to serve as a sealed beverage container.

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

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

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

68 (k) *Limitations on licensees.* -- To be authorized under this section, a licensed brewer or
69 resident brewer may not produce more than twenty-five thousand barrels per calendar year at the
70 brewer=s or resident brewer=s principal place of business and manufacture located in the State
71 of West Virginia. No more than one brewer or resident brewer license may be issued to a single

72 person or entity and no person may hold both a brewer and a resident brewer license. A licensed
 73 brewer or resident brewer under this section may only conduct tours, give complimentary samples
 74 and sell growlers during the hours of operation set forth in subdivision (1), subsection (a), section
 75 eighteen of this article. A licensed brewer or resident brewer authorized under this section shall
 76 be subject to the applicable penalties under section twenty-three of this article for violations of
 77 this section.

78 (l) *Rules.* -- The commissioner, in consultation with the Bureau for Public Health
 79 concerning sanitation, ~~is authorized to~~ may propose rules for legislative approval, pursuant to
 80 article three, chapter twenty-nine-a of this code, to implement this section: *Provided, That any*
 81 rules shall permit brewers to make their own analysis of the contents of the their products and
 82 gravity readings to establish that the product does not exceed 4.2% alcohol by weight and 12.0%
 83 by volume. The rules shall also provide that the commissioner may audit the product analysis
 84 records at any time and take samples for an independent analysis to ensure that the legal limit of
 85 alcohol in the product is being met.

**§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.**

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

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

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

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

35 (f) *Growler requirements.* -- A licensee authorized under this section must fill a growler

36 and patrons are not permitted to access the secure area or fill a growler. A licensee authorized
37 under this section must sanitize, fill, securely seal and label any growler prior to its sale. A licensee
38 authorized under this section may only offer for retail sale up to ~~two~~ ten 64-ounce, or ~~four~~ twenty
39 32-ounce, growlers of nonintoxicating beer or nonintoxicating craft beer per customer per day for
40 personal consumption off of the licensed premises and not for resale. A licensee under this section
41 may refill a growler subject to the requirements of this section. A licensee shall visually inspect
42 any growler before filling or refilling it. A licensee may not fill or refill any growler that appears to
43 be cracked, broken, unsafe or otherwise unfit to serve as a sealed beverage container.

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

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

56 (i) *Fee.* -- Commencing July 1, 2015, and by every July 1 thereafter, there is an annual
57 \$100 nonrefundable fee for a licensee, except for a licensed brewpub, to sell growlers as provided
58 by this section. The licensee must be in good standing with the state at the time of paying the fee.

59 (j) *Limitations on licensees.* -- A licensee under this section may only sell growlers during
60 the hours of operation set forth in subdivision (1), subsection (a), section eighteen of this article.
61 Any licensee licensed under this section must maintain a secure area for the sale of

62 nonintoxicating beer or nonintoxicating craft beer in a growler. The secure area must only be
 63 accessible by the licensee. Any licensee licensed under this section shall be subject to the
 64 applicable penalties under section twenty-three of this article for violations of this section.

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

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

§11-16-8. Form of application for license; fee and bond; refusal of license.

1 (a) A license may be issued by the commissioner to any person who submits an
 2 application, accompanied by a license fee and, where required, a bond, and states under oath:

3 (1) The name and residence of the applicant, the duration of ~~such~~ residency, that the
 4 applicant has been a resident of the state for a period of two years preceding the date of the
 5 application and that the applicant is twenty-one years of age. If the applicant is a firm, association,
 6 partnership, limited partnership, limited liability company or corporation, the application shall
 7 include the residence of the members or officers for a period of two years preceding the date of
 8 such application: Provided, That if any person, firm, partnership, limited partnership association
 9 or corporation applies for a license as a distributor, that person, or the members or officers, if a
 10 firm, partnership, limited partnership or association, shall state under oath that each person,
 11 member or officer has been a bona fide resident of this state for four years preceding the date of
 12 the application. If a person, firm, partnership, limited partnership, limited liability company,
 13 association, corporation or trust applies for a license as a distributor, such person, or in the case
 14 of a firm, partnership, limited partnership, limited liability company, association or trust, the
 15 members, officers, trustees or other persons in active control of the activities of the limited liability

16 company, association or trust relating to the license, shall state under oath that each has been a
17 bona fide resident of the state for four years preceding the date of such application. If the
18 applicant is a trust or has a trust as an owner, the trustees or other persons in active control of
19 the activities of the trust relating to the license shall provide a certification of trust as described in
20 section one thousand thirteen, article ten, chapter forty-four-d of this code. This certification of
21 trust shall include the excerpts described in subsection (e), section one thousand thirteen, article
22 ten, chapter forty-four-d of this code and shall further state, under oath, the names, addresses,
23 Social Security numbers and birth dates of the beneficiaries of the trust and certify that the trustee
24 and beneficiaries are twenty-one years of age or older. If a beneficiary is not twenty-one years of
25 age, the certification of trust must state that such beneficiary=s interest in the trust is represented
26 by a trustee, parent or legal guardian who is twenty-one years of age and who will direct all actions
27 on behalf of such beneficiary related to the trust with respect to the distributor until the beneficiary
28 is twenty-one years of age. Any beneficiary who is not twenty-one years of age or older shall have
29 his or her trustee, parent or legal guardian include in the certification of trust and state under oath
30 his or her name, address, Social Security number and birth date.

31 (2) The place of birth of applicant, that he or she is a citizen of the United States and of
32 good moral character and, if a naturalized citizen, when and where naturalized. If the applicant is
33 a corporation organized or authorized to do business under the laws of the state, the application
34 must state when and where incorporated, the name and address of each officer and that each
35 officer is a citizen of the United States and a person of good moral character. If the applicant is a
36 firm, association, limited liability company, partnership, limited partnership, trust or has a trust as
37 an owner, the application shall provide the place of birth of each member of the firm, association,
38 limited liability company, partnership or limited partnership and of the trustees, beneficiaries or
39 other persons in active control of the activities of the trust relating to the license and that each
40 member or trustee, beneficiary or other persons in active control of the activities of the trust
41 relating to the license is a citizen of the United States and if a naturalized citizen, when and where

42 naturalized, each of whom must qualify and sign the application. The requirements as to
43 residence do not apply to the officers of a corporation applying for a retailer's license but the
44 officers, agent or employee who manages and is in charge of the licensed premises shall possess
45 all of the qualifications required of an individual applicant for a retailer's license including the
46 requirement as to residence;

47 (3) The particular place for which the license is desired and a detailed description thereof;

48 (4) The name of the owner of the building and, if the owner is not the applicant, that the
49 applicant is the actual and bona fide lessee of the premises;

50 (5) That the place or building in which is proposed to do business conforms to all applicable
51 laws of health, fire and zoning regulations and is a safe and proper place or building not within
52 three hundred feet of a school or church measured from front door to front door, along the street
53 or streets. This requirement does not apply to a Class B license or to a place occupied by a beer
54 licensee so long as it is continuously so occupied. The prohibition against locating a proposed
55 business in a place or building within three hundred feet of a school does not apply to a college
56 or university that has notified the commissioner, in writing, that it has no objection to the location
57 of a proposed business in a place or building within three hundred feet of the college or university;

58 (6) That the applicant is not incarcerated and has not during the five years preceding the
59 date of said application been convicted of a felony;

60 (7) That the applicant is the only person in any manner pecuniarily interested in the
61 business so asked to be licensed and that no other person is in any manner pecuniarily interested
62 during the continuance of the license; and

63 (8) That the applicant has not during five years preceding the date of the application had
64 a nonintoxicating beer license revoked.

65 (b) In the case of an applicant that is trust or has a trust as an owner, a distributor license
66 may be issued only upon submission by the trustees or other persons in active control of the
67 activities of the trust relating to the distributor license of a true and correct copy of the written trust

68 instrument to the commissioner for his or her review. Notwithstanding any provision of law to the
69 contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this
70 section is confidential and is not a public record and is not available for release pursuant to the
71 West Virginia Freedom of Information Act codified in article one, chapter twenty-nine-b of this
72 code.

73 (c) The provisions and requirements of subsection (a) of this section are mandatory
74 prerequisites for the issuance and if any applicant fails to qualify, the license shall be refused. In
75 addition to the information furnished in any application, the commissioner may make such
76 additional and independent investigation of each applicant and of the place to be occupied as
77 necessary or advisable and, for this reason, all applications, with license fee and bond, must be
78 filed thirty days prior to the beginning of any fiscal year. If the application is for an unexpired
79 portion of a fiscal year, the issuance of license may be withheld for such reasonable time as
80 necessary for investigation.

81 (d) The commissioner may refuse a license to any applicant under the provisions of this
82 article if the commissioner is of the opinion:

83 (1) That the applicant is not a suitable person to be licensed;

84 (2) That the place to be occupied by the applicant is not a suitable place or is within three
85 hundred feet of any school or church measured from front door to front door along the street or
86 streets. This requirement does not apply to a Class B licensee or to a place now occupied by a
87 beer licensee so long as it is continuously so occupied. The prohibition against locating any such
88 place within three hundred feet of a school does not apply to a college or university that has
89 notified the commissioner, in writing, that it has no objection to the location of any such place
90 within three hundred feet; or

91 (3) That the license should not be issued for reason of conduct declared to be unlawful by
92 this article.

§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of

nonintoxicating beer permitted; distributors; brewers; brewpubs.

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

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

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

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

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

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

25 A Class B license may be issued only to the proprietor or owner of a grocery store. For

26 the purpose of this article, the term "grocery store" means any retail establishment commonly
27 known as a grocery store or delicatessen, and caterer or party supply store, ~~where food or food~~
28 ~~products are sold for consumption off the premises, and includes a separate and segregated~~
29 ~~portion of any other retail store which is dedicated solely to the sale of food, food products and~~
30 ~~supplies for the table for consumption off the premises.~~ The commissioner may promulgate rules
31 pursuant to chapter twenty-nine-a of this code necessary to carry this provision into effect.

32 Caterers or party supply stores are required to purchase the appropriate licenses from the
33 Alcohol Beverage Control Administration.

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

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

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

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

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

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

52 investigation and approval by the commissioner as to brewer requirements.

53 (5) For a brewpub, the license fee is ~~\$500~~ \$1,000 for each place of manufacture.

54 (c) As part of the application or renewal application and in order to determine a brewer or
55 resident brewer=s license fee pursuant to this section, a brewer or resident brewer shall provide
56 the commissioner, on a form provided by the commissioner, with an estimate of the number of
57 nonintoxicating beer or nonintoxicating craft beer barrels and gallons it will produce during the
58 year based upon the production capacity of the brewer=s or resident brewer=s manufacturing
59 facilities, and the prior year=s production and sales volume of nonintoxicating beer or
60 nonintoxicating craft beer.

61 (d) On or before July 15 of each year, every brewer or resident brewer who is granted a
62 license shall file a final report, on a form provided by the commissioner, that is dated as of June
63 30 of each year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in
64 barrels and gallons produced at its principal place of business and manufacture during the prior
65 year.

66 (e) If the actual total production of nonintoxicating beer or nonintoxicating craft beer by the
67 brewer or resident brewer exceeded the brewer<s or resident brewer=s estimate that was filed
68 with the application or renewal for a brewer<s or resident brewer=s license for that period, then
69 the brewer or resident brewer shall include a remittance for the balance of the license fee pursuant
70 to this section that would be required for the final, higher level of production.

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

**§11-16-11. Special license for festivals and fairs; license fee and application; license
subject to provisions of article; exceptions.**

1 ~~The commissioner may issue a special license to be designated a Class S license for the~~

2 ~~retail sale of nonintoxicating beer at a festival or fair, provided the festival or fair is sponsored or~~
 3 ~~endorsed by the governing body of either the municipality or of the county wherein the festival or~~
 4 ~~fair is to be conducted. Such special license shall be issued for a term of no longer than ten~~
 5 ~~consecutive days and the fee therefor shall be \$250 regardless of the term of the license. The~~
 6 ~~application for such license shall contain such information as the commissioner may require and~~
 7 ~~shall be submitted to the commissioner at least thirty days prior to the first day upon which~~
 8 ~~nonintoxicating beer is to be sold at such festival or fair.~~

9 A license issued under the provisions of this ~~section~~ article and the licensee holding ~~such~~
 10 the license shall be is subject to all other provisions of this article and the rules, regulations, and
 11 orders of the commissioner relating to such special license: *Provided*, That the commissioner may
 12 by rule, ~~regulation~~, or order provide for certain waivers or exceptions with respect to ~~such~~ the
 13 provisions, rules, regulations, or order as the circumstances of each ~~such~~ festival or fair may
 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 section twenty-four
 16 of this article. The commissioner shall by rule or order provide that wineries and breweries may
 17 participate in festivals and fairs at the same time: *Provided, however*, That under no
 18 circumstances shall the provisions of subdivisions ~~(4)~~, (2) or (3), subsection (a), section eighteen
 19 of this article, be waived nor shall any exception be granted with respect thereto.

§11-16-18. Unlawful acts of licensees; criminal penalties.

1 (a) It ~~shall be~~ is unlawful:

2 (1) For any licensee, his, her, its or their servants, agents or employees to sell, give or
 3 dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms
 4 directly connected therewith, nonintoxicating beer or cooler on weekdays between the hours of
 5 two o'clock a.m. and seven o'clock a.m., or between the hours of two o'clock a.m. and one
 6 o'clock p.m., on any Sunday, except in private clubs licensed under the provisions of article

7 seven, chapter sixty of this code, where the hours shall conform with the hours of sale of alcoholic
8 liquors;

9 (2) For any licensee, his, her, its or their servants, agents or employees to sell, furnish or
10 give any nonintoxicating beer as defined in this article to any person visibly or noticeably
11 intoxicated or to any person known to be insane or known to be a habitual drunkard;

12 (3) For any licensee, his, her, its or their servants, agents or employees to sell, furnish or
13 give any nonintoxicating beer as defined in this article to any person who is less than twenty-one
14 years of age;

15 (4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any
16 nonintoxicating beer as defined in this article, except for cash and no right of action shall exist to
17 collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein
18 contained shall prohibit a licensee from crediting to a purchaser the actual price charged for
19 packages or containers returned by the original purchaser as a credit on any sale, or from
20 refunding to any purchaser the amount paid or deposited for the containers when title is retained
21 by the vendor: *Provided*, That a distributor may accept an electronic transfer of funds if the transfer
22 of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating
23 beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor must
24 initiate the transfer no later than noon of one business day after the delivery;

25 ~~(5) For any brewer or distributor or brewpub or his, her, its or their agents to transport or~~
26 ~~deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;~~

27 ~~(6)~~ (5) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures,
28 signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged
29 in selling products of the brewing industry at retail or to offer any prize, premium, gift or other
30 similar inducement, except advertising matter of nominal value, to either trade or consumer
31 buyers: *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing
32 herein contained shall prohibit a brewer from sponsoring any professional or amateur athletic

33 event or from providing prizes or awards for participants and winners in any events: *Provided,*
34 *however,* That no event shall be sponsored which permits actual participation by athletes or other
35 persons who are minors, unless specifically authorized by the commissioner;

36 ~~(7)~~ (6) For any licensee to permit in his or her premises any lewd, immoral or improper
37 entertainment, conduct or practice;

38 ~~(8) For any licensee except the holder of a license to operate a private club issued under~~
39 ~~the provisions of article seven, chapter sixty of this code or a holder of a license or a private wine~~
40 ~~restaurant issued under the provisions of article eight of said chapter to possess a federal license,~~
41 ~~tax receipt or other permit entitling, authorizing or allowing the licensee to sell liquor or alcoholic~~
42 ~~drinks other than nonintoxicating beer;~~

43 ~~(9)~~ (7) For any licensee to obstruct the view of the interior of his or her premises by
44 enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying
45 the premises. The interior of all licensed premises shall be adequately lighted at all times:
46 *Provided,* That provisions of this subdivision do not apply to the premises of a Class B retailer,
47 the premises of a private club licensed under the provisions of article seven, chapter sixty of this
48 code or the premises of a private wine restaurant licensed under the provisions of article eight of
49 said chapter;

50 ~~(10)~~ (8) For any licensee to manufacture, import, sell, trade, barter, possess or acquiesce
51 in the sale, possession or consumption of any alcoholic liquors on the premises covered by a
52 license or on premises directly or indirectly used in connection therewith: *Provided,* That the
53 prohibition contained in this subdivision with respect to the selling or possessing or to the
54 acquiescence in the sale, possession or consumption of alcoholic liquors is not applicable with
55 respect to the holder of a license to operate a private club issued under the provisions of article
56 seven, chapter sixty of this code nor shall the prohibition be applicable to a private wine restaurant
57 licensed under the provisions of article eight of said chapter insofar as the private wine restaurant
58 is authorized to serve wine;

59 ~~(14)~~ (9) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this
60 article, purchased or acquired from any source other than a distributor, brewer or manufacturer
61 licensed under the laws of this state;

62 ~~(12)~~ (10) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon
63 his or her premises or to permit the use of loud musical instruments if either or any of the same
64 may disturb the peace and quietude of the community wherein the business is located: *Provided,*
65 That no licensee may have in connection with his or her place of business any loudspeaker
66 located on the outside of the licensed premises that broadcasts or carries music of any kind;

67 ~~(13)~~ (11) For any person whose license has been revoked, as provided in this article, to
68 obtain employment with any retailer within the period of one year from the date of the revocation,
69 or for any retailer to knowingly employ that person within the specified time;

70 ~~(14)~~ (12) For any distributor to sell, possess for sale, transport or distribute nonintoxicating
71 beer except in the original container;

72 ~~(15)~~ (13) For any licensee to knowingly permit any act to be done upon the licensed
73 premises, the commission of which constitutes a crime under the laws of this state;

74 ~~(16)~~ (14) For any Class B retailer to permit the consumption of nonintoxicating beer upon
75 his or her licensed premises;

76 ~~(17)~~ (15) For any Class A licensee, his, her, its or their servants, agents or employees, or
77 for any licensee by or through any servants, agents or employees, to allow, suffer or permit any
78 person less than eighteen years of age to loiter in or upon any licensed premises; except,
79 however, that the provisions of this subdivision do not apply where a person under the age of
80 eighteen years is in or upon the premises in the immediate company of his or her parent or
81 parents, or where and while a person under the age of eighteen years is in or upon the premises
82 for the purpose of and actually making a lawful purchase of any items or commodities therein
83 sold, or for the purchase of and actually receiving any lawful service therein rendered, including

84 the consumption of any item of food, drink or soft drink therein lawfully prepared and served or
85 sold for consumption on the premises;

86 ~~(18)~~ (16) For any distributor to sell, offer for sale, distribute or deliver any nonintoxicating
87 beer outside the territory assigned to any distributor by the brewer or manufacturer of
88 nonintoxicating beer or to sell, offer for sale, distribute or deliver nonintoxicating beer to any
89 retailer whose principal place of business or licensed premises is within the assigned territory of
90 another distributor of such nonintoxicating beer: *Provided*, That nothing herein is considered to
91 prohibit sales of convenience between distributors licensed in this state wherein one distributor
92 sells, transfers or delivers to another distributor a particular brand or brands for sale at wholesale;
93 and

94 ~~(19)~~ (17) For any licensee or any agent, servant or employee of any licensee to knowingly
95 violate any rule lawfully promulgated by the commissioner in accordance with the provisions of
96 chapter twenty-nine-a of this code.

97 (b) Any person who violates any provision of this article including, but not limited to, any
98 provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who
99 makes any false statement concerning any material fact in submitting application for license or
100 for a renewal of a license or in any hearing concerning the revocation thereof, or who commits
101 any of the acts herein declared to be unlawful is guilty of a misdemeanor and, upon conviction
102 thereof, shall be punished for each offense by a fine of not less than twenty-five nor more than
103 \$500, or confined in the county or regional jail for not less than thirty days nor more than six
104 months, or by both fine and confinement. Magistrates shall have concurrent jurisdiction with the
105 circuit court and any other courts having criminal jurisdiction in their county for the trial of all
106 misdemeanors arising under this article.

107 (c) (1) A Class B licensee that:

108 (A) Has installed a transaction scan device on its licensed premises; and

109 (B) Can demonstrate that it requires each employee, servant or agent to verify the age of

110 any individual to whom nonintoxicating beer is sold, furnished or given away by the use of the
111 transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those
112 set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner;
113 or (iii) any civil liability whatsoever for the improper sale, furnishing or giving away of
114 nonintoxicating beer to an individual who is less than twenty-one years of age by one of his or her
115 employees, servants or agents. Any agent, servant or employee who has improperly sold,
116 furnished or given away nonintoxicating beer to an individual less than twenty-one years of age
117 is subject to the criminal penalties of subsection (b) of this section. Any agent, servant or
118 employee who has improperly sold, furnished or given away nonintoxicating beer to an individual
119 less than twenty-one years of age is subject to termination from employment, and the employer
120 shall have no civil liability for the termination.

121 (2) For purposes of this section, a Class B licensee can demonstrate that it requires each
122 employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is
123 sold by providing evidence: (A) That it has developed a written policy which requires each
124 employee, servant or agent to verify the age of each individual to whom nonintoxicating beer will
125 be sold, furnished or given away; (B) that it has communicated this policy to each employee,
126 servant or agent; and (C) that it monitors the actions of its employees, servants or agents
127 regarding the sale, furnishing or giving away of nonintoxicating beer and that it has taken
128 corrective action for any discovered noncompliance with this policy.

129 (3) ATransaction scan@ means the process by which a person checks, by means of a
130 transaction scan device, the age and identity of the cardholder, and Atransaction scan device@
131 means any commercial device or combination of devices used at a point of sale that is capable
132 of deciphering in an electronically readable format the information enclosed on the magnetic strip
133 or bar code of a driver=s license or other governmental identity card.

134 (d) Nothing in this article nor any rule or regulation of the commissioner shall prevent or

135 be considered to prohibit any licensee from employing any person who is at least eighteen years
136 of age to serve in the licensee=s lawful employ, including the sale or delivery of nonintoxicating
137 beer as defined in this article. With the prior approval of the commissioner, a licensee whose
138 principal business is the sale of food or consumer goods or the providing of recreational activities,
139 including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants,
140 bowling alleys, drug stores, discount stores, grocery stores and convenience stores, may employ
141 persons who are less than eighteen years of age but at least sixteen years of age: Provided, That
142 the person's duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors:
143 Provided, however, That the authorization to employ persons under the age of eighteen years
144 shall be clearly indicated on the licensee=s license.

NOTE: The purpose of this bill is to relating to amend statutes relating to nonintoxicating beer and brewers and brewpubs. It changes residency requirements for brewer's license and distributor's license for residents of the state and authorizes combined licenses for brewers and brewpubs. It changes growler requirements and increases the daily number of growlers sold to customers. The bill permits multiple licenses to individuals and the operation of a brewery, winery or distillery by the same company or individual. It eliminates festival fees and allows breweries, wineries and distilleries to attend the same festival events. The bill eliminates Sunday sale restrictions for brewers and brewpubs and removes the food inventory requirement for retail package stores and wine specialty stores. It provides that licenses are valid for one year from date of issue instead of being based on fiscal year or part of a fiscal year. And, the bill permits brewers to make their own analysis of the alcohol contents of their products and gravity readings.

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