

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Engrossed

Senate Bill 478

BY SENATORS WALTERS AND PALUMBO

[Introduced February 2, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §11-16-6b of the Code of West Virginia, 1931, as amended, relating
2 to authorizing licensees authorized to sale growlers of nonintoxicating beer to offer
3 complimentary samples to patrons from their licensed premises.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. NONINTOXICATING BEER.

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

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 (j) 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 64-ounce, or four 32-ounce,
39 growlers of nonintoxicating beer or nonintoxicating craft beer per customer per day for personal
40 consumption off of the licensed premises and not for resale. A licensee under this section may
41 refill a growler subject to the requirements of this section. A licensee shall visually inspect any

42 growler before filling or refilling it. A licensee may not fill or refill any growler that appears to be
43 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) *Complimentary samples.* — A licensee authorized under this section may offer
57 complimentary samples of nonintoxicating beer or nonintoxicating craft beer. The complimentary
58 samples may be no greater than two ounces per sample per patron and a sampling may not
59 exceed three complimentary two-ounce samples per patron per day. Prior to any sampling, the
60 licensee shall verify, using proper identification, that the patron sampling is twenty-one years of
61 age or over and that the patron is not visibly intoxicated.

62 (j) *Fee.* — Commencing July 1, 2015, and by every July 1 thereafter, there is an annual
63 \$100 nonrefundable fee for a licensee, except for a licensed brewpub, to sell growlers as provided
64 by this section. The licensee must be in good standing with the state at the time of paying the fee.

65 (k) *Limitations on licensees.* — A licensee under this section may only sell growlers
66 during the hours of operation set forth in subdivision (1), subsection (a), section eighteen of this
67 article. Any licensee licensed under this section must maintain a secure area for the sale of

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

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

76 ~~(j)~~ (m) *Rules.* — The commissioner ~~is authorized to~~ may propose rules for legislative
77 approval, pursuant to article three, chapter twenty-nine-a of this code, to implement this section.