

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 3074**

BY DELEGATES AMBLER, WILSON, MAYNARD, PAYNTER

AND ROWE

[Introduced March 14, 2017; Referred  
to the Committee on Health and Human Resources  
then the Judiciary.]

1 A BILL to amend and reenact §11-16-3 of the Code of West Virginia, 1931, as amended, relating  
 2 to increasing the volume of alcohol that nonintoxicating beer and nonintoxicating craft beer  
 3 may contain from twelve to eighteen percent.

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

1 That §11-16-3 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted 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,  
 3 concocted, blended, bottled or otherwise produced, or imported or transhipped by a brewer or  
 4 manufacturer, the labels of which have been registered and approved by the commissioner that  
 5 is being offered for sale or sold in West Virginia by a distributor who has been appointed in a valid  
 6 franchise agreement or a valid amendment thereto.

7 (2) "Brewer" or "manufacturer" means any person manufacturing, otherwise producing or  
 8 importing or transshipping nonintoxicating beer or nonintoxicating craft beer for sale at wholesale  
 9 to any licensed distributor. Brewer or manufacturer may be used interchangeably throughout this  
 10 article. A brewer may obtain only one brewer's license for its nonintoxicating beer or  
 11 nonintoxicating craft beer.

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

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

18 (5) "Class B retail license" means a retail license permitting the retail sale of liquor at a

19 mixed retail liquor outlet licensed pursuant to chapter sixty of this code.

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

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

30 (8) "Franchise agreement" means the written agreement between a brewer and a  
31 distributor that is identical as to terms and conditions between the brewer and all its distributors,  
32 which agreement has been approved by the commissioner. The franchise agreement binds the  
33 parties so that a distributor, appointed by a brewer, may distribute all of the brewer's  
34 nonintoxicating beer products, brands or family of brands imported and offered for sale in West  
35 Virginia, including, but not limited to, existing brands, line extensions and new brands all in the  
36 brewer's assigned territory for the distributor. All brands and line extensions being imported or  
37 offered for sale in West Virginia must be listed by the brewer in the franchise agreement or a  
38 written amendment to the franchise agreement. A franchise agreement may be amended by  
39 mutual written agreement of the parties as approved by the commissioner with identical terms  
40 and conditions for a brewer and all of its distributors. Any approved amendment to the franchise  
41 agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually  
42 agree in writing to cancel a franchise agreement. A distributor terminated by a brewer as provided  
43 in this article and the promulgated rules no longer has a valid franchise agreement. If a brewer  
44 has reached an agreement to cancel a distributor or has terminated a distributor, then a brewer

45 may appoint a successor distributor who accedes to all the rights of the cancelled or terminated  
46 distributor.

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

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

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

70 (12) "Line extension" means any nonintoxicating beer product that is an extension of brand

71 or family of brands that is labeled, branded, advertised, marketed, promoted or offered for sale  
72 with the intent or purpose of being manufactured, imported, associated, contracted, affiliated or  
73 otherwise related to a brewer's existing brand through the use of a brewer, its subsidiaries, parent  
74 entities, contracted entities, affiliated entities or other related entities. In determining whether a  
75 nonintoxicating beer product is a line extension, the commissioner may consider, but is not limited  
76 to, the following factors: Name or partial name; trade name or partial trade name; logos;  
77 copyrights; trademarks or trade design; product codes; advertising promotion or pricing.

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

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

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

93 (16) "Nonintoxicating craft beer" means any beverage obtained by the natural fermentation  
94 of barley, malt, hops or any other similar product or substitute and containing not less than one  
95 half of one percent by volume and not more than ~~twelve~~ eighteen percent alcohol by volume or  
96 nine and six-tenths percent alcohol by weight with no caffeine infusion or any additives masking

97 or altering the alcohol effect.

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

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

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

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

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

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

NOTE: The purpose of this bill is to increase the volume of alcohol that nonintoxicating beer and nonintoxicating craft beer may contain from twelve to eighteen percent.

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