

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2504

BY DELEGATE ATKINSON, WESTFALL, ANDERSON, HILL,
CRISS, MARTIN, C., KELLY, J., HIGGINBOTHAM, MARTIN,
P., NELSON AND HARSHBARGER

[Introduced January 17, 2019; Referred
to the Committee on Small Business,
Entrepreneurship and Economic Development then
the Judiciary.]

1 A BILL to amend and reenact §11-16-6b of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §11-16-11a of said code, all relating to permitting licensed brewpubs,
3 Class A retail dealers, Class B retail dealers, private clubs, Class A retail licensees and
4 Class B retail licensees to serve complimentary samples of nonintoxicating beer or
5 nonintoxicating craft beer manufactured in the State of West Virginia; and removing
6 restrictions on Class A retail licensees' ability to serve complimentary nonintoxicating beer
7 samples to customers.

Be it enacted by the Legislature of West Virginia:

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 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 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 §11-16-6b(i) of this code and meets the requirements of this section may offer nonintoxicating
14 beer or nonintoxicating craft beer for retail sale to patrons from ~~their~~ its licensed premises in a

15 growler for personal consumption only off of the licensed premises and not for resale. Prior to the
16 sale, the licensee shall verify, using proper identification, that any patron purchasing
17 nonintoxicating beer or nonintoxicating craft beer is 21 years of age or over and that the patron is
18 not visibly intoxicated. A licensee authorized under this section may not sell, give or furnish
19 alcoholic liquors, including wine, for consumption off of its licensed premises, unless it is a private
20 club licensed to sell sealed wine for consumption off of the licensed premises and meets the
21 requirements set out in §60-8-3(j) and §60-8-3(l) of this code, for the sale of wine, not liquor.

22 (c) Complimentary samples. – Notwithstanding any provision of this code to the contrary,
23 a licensed brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail
24 licensee or Class B retail licensee may offer complimentary samples of nonintoxicating beer or
25 nonintoxicating craft beer manufactured in the State of West Virginia. The complimentary samples
26 may be no greater than two ounces per sample per patron, and a sampling shall not exceed three
27 complimentary two-ounce samples per patron per day. Prior to the sampling, the licensed
28 brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee or Class
29 B retail licensee shall verify, using proper identification, that any patron sampling nonintoxicating
30 beer or nonintoxicating craft beer is 21 years of age or over and that the patron is not visibly
31 intoxicated.

32 ~~(e)~~ (d) Retail sales. -- Every licensee authorized under this section shall comply with all
33 the provisions of this article as applicable to nonintoxicating beer retailers when conducting sales
34 of nonintoxicating beer or nonintoxicating craft beer and ~~shall be~~ is subject to all applicable
35 requirements and penalties in this article.

36 ~~(d)~~ (e) Payment of taxes and fees. -- A licensee authorized under this section shall pay all
37 taxes and fees required of licensed nonintoxicating beer retailers, in addition to any other taxes
38 and fees required, and meet applicable licensing provisions as required by this chapter and by
39 rule of the commissioner.

40 ~~(e)~~ (f) Advertising. -- A licensee authorized under this section may advertise a particular

41 brand or brands of nonintoxicating beer or nonintoxicating craft beer and the price of the
42 nonintoxicating beer or nonintoxicating craft beer subject to state and federal requirements or
43 restrictions. The advertisement may not encourage intemperance.

44 ~~(f)~~ (g) *Growler requirements.* -- A licensee authorized under this section must fill a growler
45 and patrons are not permitted to access the secure area or fill a growler. A licensee authorized
46 under this section ~~must~~ shall sanitize, fill, securely seal and label any growler prior to its sale. A
47 licensee authorized under this section may only offer for retail sale up to two 64-ounce, or four
48 32-ounce, growlers of nonintoxicating beer or nonintoxicating craft beer per customer per day for
49 personal consumption off of the licensed premises and not for resale. A licensee under this section
50 may refill a growler subject to the requirements of this section. A licensee shall visually inspect
51 any growler before filling or refilling it. A licensee may not fill or refill any growler that appears to
52 be cracked, broken, unsafe or otherwise unfit to serve as a sealed beverage container.

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

59 ~~(h)~~ (i) *Growler sanitation.* -- A licensed brewer or resident brewer authorized under this
60 section shall clean and sanitize all growlers he or she fills or refills in accordance with all state
61 and county health requirements prior to its sealing. In addition, the licensed brewer or resident
62 brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap
63 lines, pipe lines, barrel tubes and any other related equipment used to fill or refill growlers. Failure
64 to comply with this subsection may result in penalties under §11-16-23 of this code.

65 ~~(i)~~ (j) *Fee.* -- Commencing July 1, 2015, and by every July 1 thereafter, there is an annual
66 \$100 nonrefundable fee for a licensee, except for a licensed brewpub, to sell growlers as provided

67 by this section. The licensee must be in good standing with the state at the time of paying the fee.

68 ~~(j)~~ (k) *Limitations on licensees.* -- A licensee under this section may only sell growlers
 69 during the hours of operation set forth in §11-16-18(a)(1) of this code. Any licensee licensed under
 70 this section must maintain a secure area for the sale of nonintoxicating beer or nonintoxicating
 71 craft beer in a growler. The secure area must only be accessible by the licensee. Any licensee
 72 licensed under this section ~~shall be~~ is subject to the applicable penalties under §11-16-23 of this
 73 code for violations of this section.

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

79 ~~(l)~~ (m) *Rules.* -- The commissioner ~~is authorized to~~ may propose rules for legislative
 80 approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

§11-16-11a. Nonintoxicating beer sampling.

1 (a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee
 2 may ~~with the written approval of the commissioner, conduct a nonintoxicating beer sampling event~~
 3 ~~on a designated nonintoxicating beer sampling day~~ serve customers complimentary
 4 nonintoxicating beer samples, with all taxes paid, from its inventory.

5 ~~(b) At least five business days prior to the nonintoxicating beer sampling, the Class A retail~~
 6 ~~licensee shall submit a written proposal to the commissioner requesting to hold a nonintoxicating~~
 7 ~~beer sampling event, including:~~

8 ~~(1) The day of the event;~~

9 ~~(2) the location of the event;~~

10 ~~(3) The times for the event;~~

11 ~~(4) The names of up to three specific brands, types and flavors, if any, of the~~

12 ~~nonintoxicating beer to be sampled; and~~

13 ~~(5) A statement indicating that all the nonintoxicating beer brands have been registered~~
14 ~~and approved for sale in the state by the commissioner.~~

15 ~~(c) Upon approval by the commissioner, a Class A retail licensee may serve the~~
16 ~~complimentary nonintoxicating beer samples of the approved brands, types and flavors that are~~
17 ~~purchased by the Class A retail licensee, with all taxes paid, from its inventory~~

18 ~~(d) (b) The complimentary nonintoxicating beer sample on any nonintoxicating beer~~
19 ~~sampling one day shall may not exceed:~~

20 (1) One separate and individual sample serving per brand, type and flavor per customer
21 verified to be 21 years of age or older; and

22 (2) Two ounces in total volume per brand, type and flavor.

23 ~~(e) (c) Servers at the nonintoxicating beer sampling event of complimentary~~
24 ~~nonintoxicating beer samples shall:~~

25 (1) Be employees of the Class A retail licensee;

26 (2) Be at least 21 years of age or older; and

27 (3) Have specific knowledge of the nonintoxicating beer being sampled to convey to the
28 customer.

29 ~~(f) (d) All servers at the nonintoxicating beer sampling event of complimentary~~
30 ~~nonintoxicating beer samples shall verify the age of the customer sampling nonintoxicating beer~~
31 ~~by requiring and reviewing proper forms of identification. Servers at the nonintoxicating beer event~~
32 ~~of complimentary nonintoxicating beer samples may not serve any person who is:~~

33 (1) Under the age of 21 years; or

34 (2) Intoxicated.

35 ~~(g) A nonintoxicating beer sampling event shall (e) Provision of complimentary~~
36 ~~nonintoxicating beer samples shall occur only inside the Class A retail licensee's licensed~~
37 ~~premises.~~

- 38 ~~(1) Occur only inside the Class A retail licensee's licensed premises; and~~
- 39 ~~(2) Cease on or before 9:00 p.m. on any approved nonintoxicating beer sampling day~~
- 40 ~~(h)~~ (f) Any nonintoxicating beer bottle or can used for sampling ~~must~~ shall be from the
- 41 inventory of the licensee. ~~and clearly and conspicuously labeled "SAMPLE, NOT FOR RESALE".~~
- 42 ~~If the seal is broken on any nonintoxicating beer bottle or can, or if any nonintoxicating beer bottle~~
- 43 ~~or can is opened, then that nonintoxicating beer bottle or can must be removed from the licensed~~
- 44 ~~premises immediately following the event~~
- 45 ~~(i)~~ (g) Violations of this section are subject to the civil and criminal penalties set forth in
- 46 §11-16-18, §11-16-19, §11-16-20, §11-16-22, §11-16-23, §11-16-24, and §11-16-25 of this code;
- 47 ~~(j)~~ (h) To implement the provisions of this section, the commissioner may promulgate
- 48 emergency rules pursuant to the provisions of §29A-3-15 of this code or propose rules for
- 49 legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code.

NOTE: The purpose of this bill is to permit licensed brewpubs, Class A retail dealers, Class B retail dealers, private clubs, Class A retail licensees and Class B retail licensees to serve complimentary samples of nonintoxicating beer or nonintoxicating craft beer manufactured in the State of West Virginia and to remove prior restrictions on Class A retail licensees' ability to serve complimentary nonintoxicating beer samples to customers.

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