WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3136

By Delegates Westfall, Honaker, Householder,
Espinosa, Hardy, Riley, Clark, Hite, Martin, Storch and
Young

[Introduced January 30, 2023; Referred to the
Committee on Government Organization then the
Judiciary]
A BILL to amend and reenact §11-16-6a of the Code of West Virginia, 1931, as amended, relating to brewer and resident brewer licenses; providing that a licensed brewer or resident brewer may not produce more than 50,000 barrels per calendar year at a brewer's or resident brewer's principle place of business and manufacture; clarifying that a licensed brewer or resident brewer may have multiple locations; and providing that licensed brewers and resident brewers may enter into contract brewing services agreements with another licensed brewer or resident brewer for purposes of sharing equipment or facilities as part of the manufacture of nonintoxicating beer or nonintoxicating craft beer.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. NONINTOXICATING BEER.

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

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

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

(c) Complimentary samples. — A licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia may only offer complimentary samples of nonintoxicating beer or nonintoxicating craft beer brewed at the brewer’s or resident brewer’s principal place of business and manufacture located in the State of West Virginia. The complimentary samples may be no greater than two ounces per sample per patron, and a sampling shall not exceed 10 complimentary two-ounce samples per patron per day. A licensed brewer or resident brewer providing complimentary samples shall provide complimentary food items to the patron consuming the complimentary samples; and prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of age or over and that the patron is not visibly intoxicated.

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

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

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

(g) Growler requirements. — A licensed brewer or resident brewer under this section must fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensed brewer or resident brewer under this section must sanitize, fill, securely seal, and label any growler prior to its sale. A licensed brewer or resident brewer under this section may only offer for retail sale growlers no larger than 128 fluid ounces of nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident brewer for personal consumption off of the licensed premises and not for resale. A licensed brewer or resident brewer under this section must refill a growler subject to the requirements of this section. A licensed brewer or resident brewer shall visually inspect any growler before filling or refilling it. A licensed brewer or resident brewer may not fill or refill any growler that appears to be cracked, broken, unsafe or otherwise unfit to serve as a sealed beverage container.

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

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

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

(k) Limitations on licensees. — To be authorized under this section, a licensed brewer or resident brewer may not produce more than 25,000 barrels 50,000 barrels per calendar year at the brewer’s or resident brewer’s principal place of business and manufacture located in the State of West Virginia. No more than one brewer or resident brewer license may be issued to a single person or entity and no person may hold both a brewer and a resident brewer license. The commissioner may issue more than one brewer or resident brewer license to a single person or entity for multiple places of business and manufacture located in the State of West Virginia so long as the licensed brewer or resident brewer does not produce more than 50,000 barrels in the aggregate per calendar year. A licensed brewer or resident brewer under this section may only conduct tours, give complimentary samples and sell growlers during the hours of operation set forth in §11-16-18(a)(1) of this code. A licensed brewer or resident brewer authorized under this section shall be subject to the applicable penalties under §11-16-23 of this code for violations of this section.

(l)(1) Contract Brewing Services Agreements. – A licensed brewer or resident brewer may enter into contract brewing services agreements with another licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia for purposes of sharing brewing equipment or facilities as part of the manufacture of nonintoxicating beer or nonintoxicating craft beer. Any such contract brewing services agreement shall be provided to the West Virginia Alcohol Beverage and Control Administration and set forth the following terms and conditions:

(A) The licensed brewer or resident brewer serving as the brewer of record and retaining ownership, rights, title, and interest in the nonintoxicating beer or nonintoxicating craft beer recipe and brand;

(B) The licensed brewer or resident brewer who will be responsible for executing any brew of nonintoxicating beer or nonintoxicating craft beer;
(C) The location of the facilities to be utilized for the manufacture of the nonintoxicating beer or nonintoxicating craft beer;

(D) Specifications regarding the packaging of all nonintoxicating beer or nonintoxicating craft beer manufactured under the contract brewing services agreement; and

(E) The manner of payment of any and all federal and state excise taxes associated with the manufactured nonintoxicating beer or nonintoxicating craft beer.

(2) The licensed brewer or resident brewer serving as the brewer of record is responsible for the transportation of the finished and packaged product to their licensed facility, where it must come to rest and be tax determined. Any nonintoxicating beer or nonintoxicating craft beer manufactured pursuant to a contract brewing services agreement shall be credited to the specified brewer of record for purposes of the barrel limitations set forth in §11-16-6a(k) of this code, and not the licensed brewer or resident brewer responsible for executing any brew on behalf of the brewer of record. Subject to state and federal requirements or restrictions, the commissioner may allow for a licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia to enter into contract brewing services agreements for the purposes of executing any brew of nonintoxicating beer or nonintoxicating craft beer on behalf of any person or entity that is currently licensed and in good standing in its domicile state as a brewer, resident brewer, other nonintoxicating beer or nonintoxicating craft beer manufacturer.

(l) (m) Rules. — The commissioner, in consultation with the Bureau for Public Health concerning sanitation, is authorized to propose rules for legislative approval, pursuant to §29A-3-1 et seq. of this code, to implement this section.

NOTE: The purpose of this bill is to clarify that licensed brewers and licensed resident brewers may have more than one location so long as the brewer or resident brewer does not produce more than 50,000 barrels of nonintoxicating beer or nonintoxicating craft beer in the aggregate for a calendar year, and to allow for brewers to enter into contract brewing services agreements for purposes of sharing equipment and facilities as part of the manufacturing process.

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