WEST VIRGINIA CODE: §11-16-6B

§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.

(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 brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee, or Class B retail licensee 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 brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee, or Class B retail licensee who pays the fee in subsection (i) of this section and meets the requirements of this section may offer nonintoxicating beer or nonintoxicating craft beer for retail sale to patrons from their licensed premises in a growler for personal consumption only off of the licensed premises and not for resale. Prior to the sale, the licensee shall verify, using proper identification, that any patron purchasing nonintoxicating beer or nonintoxicating craft beer is 21 years of age or over and that the patron is not visibly intoxicated. A licensee authorized under this section may not sell, give or furnish alcoholic liquors, including wine, for consumption off of its licensed premises, unless it is a private club licensed to sell sealed wine for consumption off of the licensed premises and meets the requirements set out in §60-8-3(j) and §60-8-3(l) of this code, for the sale of wine, not liquor.

(c) Retail sales. — Every licensee authorized 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.

(d) Payment of taxes and fees. — A licensee authorized 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.

(e) Advertising. — A licensee authorized under this section may advertise a particular brand or brands of nonintoxicating beer or nonintoxicating craft beer 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.

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

(g) Growler labeling. — A licensee authorized 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.

(h) 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.

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

(j) Complimentary samples. — A licensee authorized under this section may provide complimentary samples which may be no greater than one ounce per sample and a sampling shall not exceed three different nonintoxicating beer or nonintoxicating craft beer complimentary one-ounce samples per patron per day. A licensee authorized under this section providing complimentary samples shall 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. All nonintoxicating beer and nonintoxicating craft beer utilized for sampling purposes must be purchased from the licensee’s inventory.

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

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under §11-16-23 of this code for violations of this section.

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

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

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