WEST VIRGINIA CODE: §11-16-6D

§11-16-6d. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed Class A retail dealer or a third-party; requirements; limitations; third-party license fee; retail transportation permit; and requirements.

(a) A Class A retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a sealed original container of bottles or cans, and sealed growlers, when separately licensed for growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by telephone, a mobile ordering application, or a web-based software program, as authorized by the licensee's license. There is no additional fee for licensed Class A retail dealers to obtain a nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class A retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through telephone orders, a mobile ordering application, or a web-based software program. The annual nonintoxicating beer or nonintoxicating craft beer delivery license fee is $200 per third-party entity, with no limit on the number of drivers and vehicles. The delivery license fee under this subsection may not be prorated nor refunded.

(c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall comply with licensure requirements in §11-16-8 of this code, and shall require any information set forth in this article and as reasonably required by the commissioner.

(d) Sale Requirements. —

(1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the purchase of prepared food, or a meal and the completion of the sale may be accomplished by the delivery of the prepared food or meal and nonintoxicating beer or nonintoxicating craft beer by the Class A retail dealer or third-party licensee;

(2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21

years of age or older, may not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating craft beer;

(3) "Prepared food or a meal" shall, for purposes of this article, mean food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer;

(4) A third-party delivery licensee may not have a pecuniary interest in a Class A retail dealer, as set forth in this article, therefore a third-party delivery licensee may only charge a convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third-party licensee may not collect a percentage of the delivery order for the delivery of alcohol, but may continue to collect a percentage of the delivery order directly related to the prepared food or a meal. The convenience fee charged by the third-party delivery licensee to the person purchasing may not be greater than $20 per delivery order where nonintoxicating beer or nonintoxicating craft beer are ordered by the purchasing person. For any third-party licensee also licensed for wine growler delivery as set forth in §60-8-6c of this code, or craft cocktail growler delivery as set forth in §60-7-8f of this code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler may not exceed $5.

(e) Delivery Requirements. —

(1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older. The licensed Class A retail dealer and the third-party delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A Class A retail dealer or third-party delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and shall submit certification of the training to the commissioner;

(3) The Class A retail dealer or third-party delivery licensee shall hold a retail transportation permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft beer pursuant to §11-16-6d(g) of this code: *Provided*, That a delivery driver may retain an electronic copy of his or her permit;

(4) A Class A retail dealer or third-party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders in the county or contiguous counties where the Class A retail dealer is located;

(5) A Class A retail dealer or third-party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class A retail dealer or third-party delivery licensee shall pay and account

WV Legislature

for all sales and municipal taxes;

(6) A Class A retail dealer or third-party delivery licensee may not deliver prepared food or a meal, and nonintoxicating beer or nonintoxicating craft beer to any other Class A licensee;

(7) A Class A retail dealer or third-party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer for personal use, and not for resale; and

(8) A Class A retail dealer or third-party delivery licensee may not deliver and leave prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer at any address without verifying a person's age and identification as required by this section.

(f) Telephone, mobile ordering application, or web-based software requirements. —

(1) The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the prepared food or a meal, and nonintoxicating beer or nonintoxicating craft beer delivery which is subject to age verification upon delivery with the delivery person's visual review and age verification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

(4) All records are subject to inspection by the commissioner. A Class A retail dealer or third-party delivery licensee shall retain all records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer shall be issued a retail transportation permit per §11-16-6d(g) of this code.

(g) Retail Transportation Permit. —

(1) A Class A retail dealer or third-party delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and nonintoxicating beer or nonintoxicating craft beer.

(2) A Class A retail dealer or a third-party licensee shall apply for a permit and provide vehicle and driver information, as required by the commissioner. Upon any change in vehicles or drivers, the Class A retail dealer or third-party delivery licensee shall update the

WV Legislature

vehicle and driver information with the commissioner within 10 days of the change.

(h) Enforcement. —

(1) A Class A retail dealer or third-party delivery licensee is responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple Class A retail dealers or licensees, employees, or independent contractors.

(2) A license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the Class A retail dealer or third-party delivery licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a growler subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, or accepting delivery of orders are considered to be purchasers.

WV Legislature