WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 3174

(By Delegates Brown, Fragale, Moore and Skaff)

Passed March 10, 2012
To Take Effect Ninety Days From Passage
AN ACT to amend and reenact §11-16-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-16-11a; to amend said code by adding thereto a new section, designated §60-3A-3a; and to amend and reenact §60-3A-4 of said code, all relating to allowing Class A retail licensees the ability to conduct responsible nonintoxicating beer and liquor sampling events; requiring preapproval of the events by the ABCA commissioner; establishing standards, limitations, and prohibitions to be applied for the conduct of such events; definitions; incorporating civil penalties for violations by reference; criminal penalties for violations by reference; providing for emergency rules; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §11-16-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-16-11a; that said code be
amended by adding thereto a new section, designated §60-3A-3a; and that §60-3A-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

For the purpose of this article, except where the context clearly requires differently:

1. “Brewer” or “manufacturer” means any person, firm, association, partnership or corporation manufacturing, brewing, mixing, concocting, blending, bottling or otherwise producing or importing or transshipping from a foreign country nonintoxicating beer for sale at wholesale to any licensed distributor.

2. “Brewpub” means a place of manufacture of nonintoxicating beer owned by a resident brewer, subject to federal regulations and guidelines, a portion of which premises are designated for retail sales.

3. “Class A retail license” means a retail license permitting the retail sale of liquor at a freestanding liquor retail outlet licensed pursuant to chapter sixty of this code.

4. “Commissioner” means the West Virginia Alcohol Beverage Control Commissioner.

5. “Distributor” means and includes any person jobbing or distributing nonintoxicating beer to retailers at wholesale and whose warehouse and chief place of business shall be within this state.
(6) "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, beer, nonintoxicating beer and other alcohol-related products, as defined pursuant to section four, article three-a, chapter sixty of this code.

(7) "Nonintoxicating beer" means all cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers containing at least one half of one percent alcohol by volume, but not more than nine and six-tenths of alcohol by weight, or twelve percent by volume, whichever is greater, all of which are hereby declared to be nonintoxicating and the word "liquor" as used in chapter sixty of this code shall not be construed to include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.

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

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

(10) "Nonintoxicating craft beer" means any beverage obtained by the fermentation of barley, malt, hops or any other similar product or substitute and containing not less than one half of one percent by volume and not more than twelve percent alcohol by volume or nine and six-tenths percent alcohol by weight.
“Original container” means the container used by the brewer at the place of manufacturing, bottling or otherwise producing nonintoxicating beer for sale at wholesale.

(12) “Person” means and includes an individual, firm, partnership, limited partnership, association or corporation.

(13) “Resident brewer” means any person, firm, association, partnership, or corporation whose principal place of business is within the state.

(14) “Retailer” means any person selling, serving, or otherwise dispensing nonintoxicating beer and all products regulated by this article, including, but not limited to, any malt cooler, at his or her established and licensed place of business.

(15) “Tax Commissioner” means the Tax Commissioner of the State of West Virginia or the commissioner’s designee.

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

(a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee may, with the written approval of the commissioner, conduct a nonintoxicating beer sampling event on a designated nonintoxicating beer sampling day.

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

(1) The day of the event;

(2) the location of the event;
(3) The times for the event;

(4) The names of up to three specific brands, types and flavors, if any, of the nonintoxicating beer to be sampled; and

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

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

(d) The complimentary nonintoxicating beer sample on any nonintoxicating beer sampling day shall not exceed:

(1) One separate and individual sample servings per brand, type and flavor per customer verified to be twenty-one years of age or older; and

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

(e) Servers at the nonintoxicating beer sampling event shall:

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

(2) Be at least twenty-one years of age or older; and

(3) Have specific knowledge of the nonintoxicating beer being sampled to convey to the customer.
(f) All servers at the nonintoxicating beer sampling event shall verify the age of the customer sampling nonintoxicating beer by requiring and reviewing proper forms of identification. Servers at the nonintoxicating beer event may not serve any person who is:

   (1) Under the age of twenty-one years; or

   (2) Intoxicated.

(g) A nonintoxicating beer sampling event shall:

   (1) Occur only inside the Class A retail licensee’s licensed premises; and

   (2) Cease on or before 9:00 p.m. on any approved nonintoxicating beer sampling day.

(h) Any nonintoxicating beer bottle or can used for sampling must be from the inventory of the licensee, and clearly and conspicuously labeled “SAMPLE, NOT FOR RESALE”. If the seal is broken on any nonintoxicating beer bottle or can, or if any nonintoxicating beer bottle or can is opened, then that nonintoxicating beer bottle or can must be removed from the licensed premises immediately following the event.

(i) Violations of this section are subject to the civil and criminal penalties set forth in sections eighteen, nineteen, twenty, twenty-two, twenty-three, twenty-four and twenty-five of this article;

(j) To implement the provisions of this section, the commissioner may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code or propose rules for legislative approval.
in accordance with the provisions of article three, chapter twenty-nine-a of this code.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-3a. Liquor sampling.

(a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee may, with the written approval of the commissioner, conduct a liquor sampling event on a designated sampling day.

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

(1) The day of the event;

(2) the location of the event;

(3) The times for the event; and

(4) The specific brand and flavor of the West Virginia product to be sampled.

(c) Upon approval by the commissioner, a Class A retail licensee may serve a complimentary liquor sample of the approved brand and flavor of the West Virginia product that is purchased by the Class A retail licensee from the commissioner.
(d) The complimentary liquor samples on any sampling day shall not exceed:

(1) One separate and individual sample serving per customer verified to be twenty-one years of age or older; and

(2) One ounce in total volume.

(e) Servers at the liquor sampling event shall:

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

(2) Be at least twenty-one years of age or older; and

(3) Have specific knowledge of the West Virginia product being sampled to convey to the customer.

(f) All servers at the liquor sampling event shall verify the age of the customer sampling liquor by requiring and reviewing proper forms of identification. Servers at the liquor sampling event may not serve any person who is:

(1) Under the age of twenty-one years;

(2) Intoxicated.

(g) A liquor sampling event shall:

(1) Occur only inside the Class A retail licensee’s licensed premises; and

(2) Cease on or before 9:00 p.m. on any approved sampling day.

(h) Any liquor bottle used for sampling must be from the inventory of the licensee, and clearly and conspicuously
labeled “SAMPLE, NOT FOR RESALE”. If the seal is broken on any liquor bottle or if any liquor bottle is opened, then that liquor bottle must be removed from the licensed premises immediately following the event.

(i) Violations of this section are subject to the civil and criminal penalties set forth in sections twenty-four, twenty-five-a, twenty-six and twenty-seven of this article;

(j) To implement the provisions of this section, the commissioner may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code or propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§60-3A-4. Definitions.

(a) “Active retail license” means a current license for a retail outlet that has been open and in continuous operation for a period of not less than twelve months prior to July 1, 2010, or July 1 every ten years thereafter.

(b) “Active retail licensee” means a person who holds an active retail license at the time of the effective date of the amendments to this section during the first extraordinary session of the Legislature in 2009 or that person’s successor or any person who holds an active retail license when it expires at the end of a ten-year period.

(c) “Applicant” means any person who elects to pay a purchase option for a Class A retail license, who bids for a retail license or who seeks the commissioner’s approval to purchase or otherwise acquire a retail license from a retail licensee, in accordance with the provisions of this article.
(d) "Application" means the form prescribed by the commissioner which must be filed with the commissioner by any person bidding for a retail license.

(e) "Board" means the Retail Liquor Licensing Board created by this article.

(f) "Class A retail license" means a retail license permitting the retail sale of liquor at a freestanding liquor retail outlet.

(g) "Class B retail license" means a retail license permitting the sale of liquor at a mixed retail liquor outlet.

(h) "Current retail licensee" means a person who holds a retail license at the time of the effective date of the amendments to this section during the first extraordinary session of the Legislature in 2009 or that person’s successor or any person who holds a retail license when it expires at the end of a ten-year period.

(i) "Designated areas" means one or more geographic areas within a market zone designated as such by the board.

(j) "Executive officer" means the president or other principal officer, partner or member of an applicant or retail licensee, any vice president or other principal officer, partner or member of an applicant or retail licensee in charge of a principal business unit or division, or any other officer, partner or member of an applicant or retail licensee who performs a policy-making function.

(k) "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, beer, nonintoxicating beer and other alcohol-related products, including tobacco-related products.
(l) "Liquor" means alcoholic liquor as defined in section five, article one of this chapter and also includes both wine and fortified wines as those terms are defined in section two, article eight of this chapter.

(m) "Liquor sampling event" means an event approved by the commissioner, for a Class A retail licensee to hold a liquor sampling authorized pursuant to section three-a of this article.

(n) "Market zone" means a geographic area designated as such by the board for the purpose of issuing retail licenses.

(o) "Mixed retail liquor outlet" means a retail outlet that sells liquor, beer, nonintoxicating beer and other alcohol-related products, including tobacco-related products, in addition to convenience and other retail products.

(p) "Person" means an individual, firm, corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature.

(q) "Retail license" means a license issued under the provisions of this article permitting the sale of liquor at retail.

(r) "Retail licensee" means the holder of a retail license.

(s) "Retail outlet" means a specific location where liquor may be lawfully sold by a retail licensee under the provisions of this article.

(t) "Sampling day" means any days and hours of the week where retail licensees may sell liquor pursuant to section eighteen, article three-a, chapter sixty of this code for a Class A retail licensee to conduct a liquor sampling event.
(u) “West Virginia product” means all liquor types and classes as approved by the commissioner and maintained on the ABCA retail liquor product list.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the __th__ day of ____, 2012.

Governor
PRESENTED TO THE GOVERNOR

MAR 19 2012

Time 11:10 am