House Bill No. 2956

(By Delegate(s) Miley, Boggs, Manchin, Marcum, Ferro, Reynolds and Ashley)

Passed April 13, 2013

In effect ninety days from passage.
AN ACT to amend and reenact §11-16-3 and §11-16-6 of the Code of West Virginia, 1931, as amended, all relating to nonintoxicating beer distributorships and their licenses, resident brewers and brewpubs; expanding the definition of "person" for purposes of holding a nonintoxicating beer distributorship; allowing individuals, forms, trusts, partnerships, limited partnerships, limited liability companies, associations and corporations to hold a distributor’s license; clarifying and amending applicable definitions; clarifying certain requirements and operations relating to distribution and sales at brewpubs; allowing for the limited sale of nonintoxicating beer and nonintoxicating craft beer by brewpubs for personal consumption off premises and not for resale; amending definition of resident brewers; placing limit on amount of nonintoxicating beer and non-intoxicating craft beer that a resident brewer may self-distribute; prohibiting addition or infusion of nonintoxicating beer or non-intoxicating craft beer with caffeine or any additives masking or altering alcohol effect.
Be it enacted by the Legislature of West Virginia:

That §11-16-3 and §11-16-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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 or nonintoxicating craft 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 and state regulations and guidelines, a portion of which premises are designated for retail sales of nonintoxicating beer or nonintoxicating craft beer by the resident brewer owning the brewpub.

(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 or nonintoxicating craft beer to retailers at wholesale and whose warehouse and chief place of business shall be within this state. For purposes of a distributor only, the term "person" means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association or corporation. Any trust licensed as a distributor or
any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of article eleven of this chapter notwithstanding the liability of trustees in article ten, chapter forty-four-d of this code.

(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) "Growler" means a glass ceramic or metal container or jug, capable of being securely sealed, utilized by a brewpub for purposes of off-premise sales of nonintoxicating beer or nonintoxicating craft beer for personal consumption not on a licensed premise and not for resale.

(8) "Nonintoxicating beer" means all natural 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 with no caffeine infusion or any additives masking or altering the alcohol effect 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. The word "liquor" as used in chapter sixty of this code does not include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.

(9) "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.
(10) "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.

(11) "Nonintoxicating craft beer" means any beverage obtained by the natural 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 with no caffeine infusion or any additives masking or altering the alcohol effect.

(12) "Original container" means the container used by the brewer at the place of manufacturing, bottling or otherwise producing nonintoxicating beer for sale at wholesale.

(13) "Person" means and includes an individual, firm, partnership, limited partnership, limited liability company, association or corporation.

(14) "Resident brewer" means any brewer or manufacturer of non-intoxicating beer or non-intoxicating craft beer whose principal place of business and manufacture is located in the State of West Virginia and which does not brew or manufacture more than 25,000 barrels of non-intoxicating beer or non-intoxicating craft beer annually, and does not self-distribute more than 10,000 barrels thereof in the State of West Virginia annually.

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

(16) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or the commissioner's designee.
§11-16-6. License in one capacity only; no connection between different licensees; when brewer may act as distributor; credit and rebates proscribed; brewpub.

(a) No person shall be licensed in more than one capacity under the terms of this article, and there shall be no connection whatsoever between any retailer, distributor, resident brewer or brewer, and no person shall be interested directly or indirectly through the ownership of corporate stock, membership in a partnership, or in any other way in the business of a retailer, if such person is at the same time interested in the business of a brewer, resident brewer or distributor. A resident brewer may act as distributor in a limited capacity for his or her own product from such resident brewery, place of manufacture or bottling, but a resident brewer is not permitted to act as a distributor as defined in section three of this article: Provided, That nothing in this article may prevent a resident brewer from using the services of licensed distributors as specified in this article. A resident brewer or distributor may sell to a consumer for personal use and not for resale, draught beer in quantities of one-eighth, one-fourth and one-half barrels in the original containers. A resident brewer owning a brewpub may sell nonintoxicating beer or nonintoxicating craft beer produced by the brewpub in a sealed growler, cans or bottles for personal consumption off of a licensed premise and not for resale.

(b) It is unlawful for any brewer, resident brewer, manufacturer or distributor to assist any retailer or for any retailer to accept assistance from any brewer, manufacturer or distributor any gifts or loans or forebearance of money or property of any kind, nature or description, or other thing of value or by the giving of any rebates or discounts of any kind whatsoever except as may be permitted by rule, regulation, or order promulgated by the commissioner in accordance with this article.

Notwithstanding paragraphs (a) and (b) above, a brewpub may offer for retail sale nonintoxicating beer or nonintoxicating
craft beer so long as the sale of the nonintoxicating beer or nonintoxicating craft beer is limited to the brewpub premises, except for up to two growlers per customer for personal consumption off of a licensed premises and not for resale.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Member, Chairman, Senate Committee

Originating in the House.

In 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 3rd day of May, 2013.

Governor