

SB273

FILED

2015 MAR 24 P 5:09

WEST VIRGINIA LEGISLATURE
EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2015

OFFICE WEST VIRGINIA
SECRETARY OF STATE



ENROLLED
COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 273

(SENATORS COLE (MR. PRESIDENT) AND KESSLER,
BY REQUEST OF THE EXECUTIVE)

[PASSED MARCH 14, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

FILED

2015 MAR 24 P 5:09

ENROLLED
COMMITTEE SUBSTITUTE

OFFICE WEST VIRGINIA
SECRETARY OF STATE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 273

**(SENATORS COLE (MR. PRESIDENT) AND KESSLER,
BY REQUEST OF THE EXECUTIVE)**

[Passed March 14, 2015; in effect ninety days from passage.]

AN ACT to amend and reenact §11-16-3, §11-16-6, §11-16-9 and §11-16-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §11-16-6a and §11-16-6b, all relating to brewer, resident brewer, brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee and Class B retail licensee licensing and operations; clarifying, adding and revising definitions; providing legislative findings; authorizing licensed brewers and resident brewers to offer complimentary nonintoxicating beer and nonintoxicating craft beer samples; authorizing licensed brewers, resident brewers, brewpubs, Class A retail dealers, Class B retail dealers, private clubs, Class A retail licensees and Class B retail licensees to sell

nonintoxicating beer and nonintoxicating craft beer in growlers subject to limitations; imposing operational, advertising, sanitation, sealing and labeling standards; authorizing and imposing penalties; authorizing promulgation of rules; clarifying and imposing license requirements and fees; removing authorization to propose rules; changing license fee schedule for certain brewers and resident brewers; decreasing license fee for brewpubs; requiring annual production report; providing for fee correction; authorizing penalty for failure to submit production report; removing brewpub bonding requirement; and providing clarifying and technical amendments.

Be it enacted by the Legislature of West Virginia:

That §11-16-3, §11-16-6, §11-16-9 and §11-16-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §11-16-6a and §11-16-6b, all to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

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

3 (1) "Brand" means a nonintoxicating beer product
4 manufactured, brewed, mixed, concocted, blended, bottled or
5 otherwise produced, or imported or transhipped by a brewer
6 or manufacturer, the labels of which have been registered and
7 approved by the commissioner that is being offered for sale
8 or sold in West Virginia by a distributor who has been
9 appointed in a valid franchise agreement or a valid
10 amendment thereto.

11 (2) "Brewer" or "manufacturer" means any person
12 manufacturing, otherwise producing or importing or
13 transshipping nonintoxicating beer or nonintoxicating craft
14 beer for sale at wholesale to any licensed distributor. Brewer
15 or manufacturer may be used interchangeably throughout this
16 article. A brewer may obtain only one brewer's license for its
17 nonintoxicating beer or nonintoxicating craft beer.

18 (3) "Brewpub" means a place of manufacture of
19 nonintoxicating beer or nonintoxicating craft beer owned by
20 a resident brewer, subject to federal and state regulations and
21 guidelines, a portion of which premises are designated for
22 retail sales of nonintoxicating beer or nonintoxicating craft
23 beer by the resident brewer owning the brewpub.

24 (4) "Class A retail license" means a retail license
25 permitting the retail sale of liquor at a freestanding liquor
26 retail outlet licensed pursuant to chapter sixty of this code.

27 (5) "Class B retail license" means a retail license
28 permitting the retail sale of liquor at a mixed retail liquor
29 outlet licensed pursuant to chapter sixty of this code.

30 (6) "Commissioner" means the West Virginia Alcohol
31 Beverage Control Commissioner.

32 (7) "Distributor" means and includes any person jobbing
33 or distributing nonintoxicating beer or nonintoxicating craft
34 beer to retailers at wholesale and whose warehouse and chief
35 place of business shall be within this state. For purposes of a
36 distributor only, the term "person" means and includes an
37 individual, firm, trust, partnership, limited partnership,
38 limited liability company, association or corporation. Any
39 trust licensed as a distributor or any trust that is an owner of
40 a distributor licensee, and the trustee or other persons in
41 active control of the activities of the trust relating to the

42 distributor license, is liable for acts of the trust or its
43 beneficiaries relating to the distributor license that are
44 unlawful acts or violations of article eleven of this chapter
45 notwithstanding the liability of trustees in article ten, chapter
46 forty-four-d of this code.

47 (8) "Franchise agreement" means the written agreement
48 between a brewer and a distributor that is identical as to terms
49 and conditions between the brewer and all its distributors,
50 which agreement has been approved by the commissioner.
51 The franchise agreement binds the parties so that a
52 distributor, appointed by a brewer, may distribute all of the
53 brewer's nonintoxicating beer products, brands or family of
54 brands imported and offered for sale in West Virginia,
55 including, but not limited to, existing brands, line extensions
56 and new brands all in the brewer's assigned territory for the
57 distributor. All brands and line extensions being imported or
58 offered for sale in West Virginia must be listed by the brewer
59 in the franchise agreement or a written amendment to the
60 franchise agreement. A franchise agreement may be amended
61 by mutual written agreement of the parties as approved by the
62 commissioner with identical terms and conditions for a
63 brewer and all of its distributors. Any approved amendment
64 to the franchise agreement becomes a part of the franchise
65 agreement. A brewer and a distributor may mutually agree in
66 writing to cancel a franchise agreement. A distributor
67 terminated by a brewer as provided in this article and the
68 promulgated rules no longer has a valid franchise agreement.
69 If a brewer has reached an agreement to cancel a distributor
70 or has terminated a distributor, then a brewer may appoint a
71 successor distributor who accedes to all the rights of the
72 cancelled or terminated distributor.

73 (9) "Franchise distributor network" means the distributors
74 who have entered into a binding written franchise agreement,
75 identical as to terms and conditions, to distribute

76 nonintoxicating beer products, brands and line extensions in
77 an assigned territory for a brewer. A brewer may only have
78 one franchise distributor network: *Provided*, That a brewer
79 that has acquired the manufacturing, bottling or other
80 production rights for the sale of nonintoxicating beer at
81 wholesale from a selling brewer as specified in subdivision
82 (2), subsection (a), section twenty-one of this article shall
83 continue to maintain and be bound by the selling brewer's
84 separate franchise distributor's network for any of its existing
85 brands, line extensions and new brands.

86 (10) "Freestanding liquor retail outlet" means a retail
87 outlet that sells only liquor, beer, nonintoxicating beer and
88 other alcohol-related products, as defined pursuant to section
89 four, article three-a, chapter sixty of this code.

90 (11) "Growler" means a container or jug that is made of
91 glass, ceramic, metal or other material approved by the
92 commissioner, that may be only thirty-two or sixty-four fluid
93 ounces in size and must be capable of being securely sealed.
94 The growler is utilized by an authorized licensee for purposes
95 of off-premise sales only of nonintoxicating beer or
96 nonintoxicating craft beer for personal consumption not on a
97 licensed premise and not for resale. Notwithstanding any
98 other provision of this code to the contrary, a securely sealed
99 growler is not an open container under federal, state and local
100 law. A growler with a broken seal is an open container under
101 federal, state and local law unless it is located in an area of
102 the motor vehicle physically separated from the passenger
103 compartment. The secure sealing of a growler requires the
104 use of a tamper-resistant seal, security tape or other material,
105 as approved by the commissioner, placed on or over the
106 growler's opening, which seal, security tape or other material
107 is clearly marked with the date of the secure sealing by the
108 authorized licensee who is selling the growler.

109 (12) "Line extension" means any nonintoxicating beer
110 product that is an extension of brand or family of brands
111 that is labeled, branded, advertised, marketed, promoted or
112 offered for sale with the intent or purpose of being
113 manufactured, imported, associated, contracted, affiliated or
114 otherwise related to a brewer's existing brand through the
115 use of a brewer, its subsidiaries, parent entities, contracted
116 entities, affiliated entities or other related entities. In
117 determining whether a nonintoxicating beer product is a line
118 extension, the commissioner may consider, but is not
119 limited to, the following factors: name or partial name; trade
120 name or partial trade name; logos; copyrights; trademarks
121 or trade design; product codes; advertising promotion or
122 pricing.

123 (13) "Nonintoxicating beer" means all natural cereal malt
124 beverages or products of the brewing industry commonly
125 referred to as beer, lager beer, ale and all other mixtures and
126 preparations produced by the brewing industry, including
127 malt coolers and nonintoxicating craft beers with no caffeine
128 infusion or any additives masking or altering the alcohol
129 effect containing at least one half of one percent alcohol by
130 volume, but not more than nine and six-tenths of alcohol by
131 weight, or twelve percent by volume, whichever is greater.
132 The word "liquor" as used in chapter sixty of this code does
133 not include or embrace nonintoxicating beer nor any of the
134 beverages, products, mixtures or preparations included within
135 this definition.

136 (14) "Nonintoxicating beer sampling event" means an
137 event approved by the commissioner for a Class A retail
138 licensee to hold a nonintoxicating beer sampling authorized
139 pursuant to section eleven-a of this article.

140 (15) "Nonintoxicating beer sampling day" means any
141 days and hours of the week where Class A retail licensees

142 may sell nonintoxicating beer pursuant to section eleven-a
143 and subdivision (1), subsection (a), section eighteen of this
144 article, and is approved, in writing, by the commissioner to
145 conduct a nonintoxicating beer sampling event.

146 (16) "Nonintoxicating craft beer" means any beverage
147 obtained by the natural fermentation of barley, malt, hops or
148 any other similar product or substitute and containing not less
149 than one half of one percent by volume and not more than
150 twelve percent alcohol by volume or nine and six-tenths
151 percent alcohol by weight with no caffeine infusion or any
152 additives masking or altering the alcohol effect.

153 (17) "Original container" means the container used by a
154 resident brewer or brewer at the place of manufacturing,
155 bottling or otherwise producing nonintoxicating beer or
156 nonintoxicating craft beer for sale at wholesale.

157 (18) "Person" means and includes an individual, firm,
158 partnership, limited partnership, limited liability company,
159 association or corporation.

160 (19) "Private club" means a license issued pursuant to
161 article seven, chapter sixty of this code.

162 (20) "Resident brewer" means any brewer or
163 manufacturer of nonintoxicating beer or nonintoxicating craft
164 beer whose principal place of business and manufacture is
165 located in the state of West Virginia and which does not brew
166 or manufacture more than twenty-five thousand barrels of
167 nonintoxicating beer or nonintoxicating craft beer annually,
168 and does not self-distribute more than ten thousand barrels
169 thereof in the state of West Virginia annually.

170 (21) "Retailer" means any person selling, serving, or
171 otherwise dispensing nonintoxicating beer and all products

172 regulated by this article, including, but not limited to, malt
173 coolers at his or her established and licensed place of
174 business.

175 (22) "Tax Commissioner" means the Tax Commissioner
176 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; brewer, resident brewer and brewpub
requirements.**

1 (a) No person shall be licensed in more than one capacity
2 under the terms of this article, and there shall be no
3 connection whatsoever between any retailer, distributor,
4 resident brewer or brewer, and no person shall be interested,
5 directly or indirectly, through the ownership of corporate
6 stock, membership in a partnership, or in any other way in the
7 business of a retailer, if such person is at the same time
8 interested in the business of a brewer, resident brewer or
9 distributor. A resident brewer may act as distributor in a
10 limited capacity for his or her own product from such resident
11 brewery, place of manufacture or bottling, but a resident
12 brewer is not permitted to act as a distributor as defined in
13 section three of this article: *Provided*, That nothing in this
14 article may prevent a resident brewer from using the services
15 of licensed distributors as specified in this article. A resident
16 brewer or distributor may sell to a patron for personal use and
17 not for resale quantities of draught beer in original containers
18 that are no larger in size than one-half barrel for off-premises
19 consumption. A resident brewer who also has a brewpub
20 license may sell nonintoxicating beer or nonintoxicating craft
21 beer produced by the resident brewer in cans, bottles or
22 sealed growlers, pursuant to section six-b of this article, for
23 personal consumption off of the brewpub's licensed premises
24 and not for resale.

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

34 (c) Notwithstanding subsections (a) and (b) of this
35 section, a brewpub may offer for retail sale nonintoxicating
36 beer or nonintoxicating craft beer so long as the sale of the
37 nonintoxicating beer or nonintoxicating craft beer is limited
38 to the brewpub's licensed premises, except as provided in
39 section six-b of this article.

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

1 (a) *Legislative findings.* – The Legislature hereby finds
2 that it is in the public interest to regulate, control and support
3 the brewing, manufacturing, distribution, sale, consumption,
4 transportation and storage of nonintoxicating beer and
5 nonintoxicating craft beer and its industry in this state in
6 order to protect the public health, welfare and safety of the
7 citizens of this state, and promote hospitality and tourism.
8 Therefore, this section authorizes a licensed brewer or
9 resident brewer with its principal place of business and
10 manufacture located in this state to have certain abilities in
11 order to promote the sale of nonintoxicating beer and
12 nonintoxicating craft beer manufactured in this state for the
13 benefit of the citizens of this state, the state's growing
14 brewing industry and the state's hospitality and tourism
15 industry, all of which are vital components for the state's
16 economy.

17 **(b) *Sales of nonintoxicating beer.* – A licensed brewer or**
18 **resident brewer with its principal place of business and**
19 **manufacture located in the state of West Virginia may offer**
20 **only nonintoxicating beer or nonintoxicating craft beer**
21 **manufactured by the licensed brewer or resident brewer for**
22 **retail sale to customers from the brewer’s or resident**
23 **brewer’s licensed premises for consumption off the licensed**
24 **premises only in the form of kegs, bottles, cans or growlers**
25 **for personal consumption and not for resale. A licensed**
26 **brewer or resident brewer may not sell, give or furnish**
27 **nonintoxicating beer for consumption on the premises of the**
28 **principal place of business and manufacture located in the**
29 **state of West Virginia, except for the limited purpose of**
30 **complimentary samples as permitted in subsection (c) of this**
31 **section.**

32 **(c) *Complimentary samples.* – A licensed brewer or**
33 **resident brewer with its principal place of business and**
34 **manufacture located in the state of West Virginia may only**
35 **offer complimentary samples of nonintoxicating beer or**
36 **nonintoxicating craft beer brewed at the brewer’s or resident**
37 **brewer’s principal place of business and manufacture located**
38 **in the state of West Virginia. The complimentary samples**
39 **may be no greater than two ounces per sample per patron,**
40 **and a sampling shall not exceed ten complimentary two-**
41 **ounce samples per patron per day. A licensed brewer or**
42 **resident brewer providing complimentary samples shall**
43 **provide complimentary food items to the patron consuming**
44 **the complimentary samples; and prior to any sampling,**
45 **verify, using proper identification, that the patron sampling**
46 **is twenty-one years of age or over and that the patron is not**
47 **visibly intoxicated.**

48 **(d) *Retail sales.* – Every licensed brewer or resident**
49 **brewer under this section shall comply with all the provisions**
50 **of this article as applicable to nonintoxicating beer retailers**

51 when conducting sales of nonintoxicating beer or
52 nonintoxicating craft beer and shall be subject to all
53 applicable requirements and penalties in this article.

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

60 **(f) *Advertising.*** – A licensed brewer or resident brewer
61 under this section may advertise a particular brand or brands
62 of nonintoxicating beer or nonintoxicating craft beer
63 produced by the licensed brewer or resident brewer and the
64 price of the nonintoxicating beer or nonintoxicating craft beer
65 subject to state and federal requirements or restrictions. The
66 advertisement may not encourage intemperance.

67 **(g) *Growler requirements.*** – A licensed brewer or
68 resident brewer under this section must fill a growler and
69 patrons are not permitted to access the secure area or fill a
70 growler. A licensed brewer or resident brewer under this
71 section must sanitize, fill, securely seal and label any growler
72 prior to its sale. A licensed brewer or resident brewer under
73 this section may only offer for retail sale up to two 64-ounce,
74 or four 32-ounce, growlers of nonintoxicating beer or
75 nonintoxicating craft beer manufactured by the licensed
76 brewer or resident brewer per customer per day for personal
77 consumption off of the licensed premises and not for resale.
78 A licensed brewer or resident brewer under this section may
79 refill a growler subject to the requirements of this section. A
80 licensed brewer or resident brewer shall visually inspect any
81 growler before filling or refilling it. A licensed brewer or
82 resident brewer may not fill or refill any growler that appears
83 to be cracked, broken, unsafe or otherwise unfit to serve as a
84 sealed beverage container.

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

95 **(i) Growler sanitation.** – A licensed brewer or resident
96 brewer authorized under this section shall clean and sanitize
97 all growlers he or she fills or refills in accordance with all
98 state and county health requirements prior to its sealing. In
99 addition, the licensed brewer or resident brewer shall sanitize,
100 in accordance with all state and county health requirements,
101 all taps, tap lines, pipe lines, barrel tubes and any other
102 related equipment used to fill or refill growlers. Failure to
103 comply with this subsection may result in penalties under
104 section twenty-three of this article.

105 **(j) Fee.** – There is no additional fee for a licensed brewer
106 or resident brewer authorized under this section to sell
107 growlers.

108 **(k) Limitations on licensees.** – To be authorized under
109 this section, a licensed brewer or resident brewer may not
110 produce more than twenty-five thousand barrels per calendar
111 year at the brewer's or resident brewer's principal place of
112 business and manufacture located in the state of West
113 Virginia. No more than one brewer or resident brewer
114 license may be issued to a single person or entity and no
115 person may hold both a brewer and a resident brewer license.
116 A licensed brewer or resident brewer under this section may
117 only conduct tours, give complimentary samples and sell

13

[Enr. Com. Sub. for Com. Sub. for S. B. No. 273

118 growlers during the hours of operation set forth in
119 subdivision (1), subsection (a), section eighteen of this
120 article. A licensed brewer or resident brewer authorized
121 under this section shall be subject to the applicable penalties
122 under section twenty-three of this article for violations of this
123 section.

124 (l) *Rules.* – The commissioner, in consultation with the
125 Bureau for Public Health concerning sanitation, is authorized
126 to propose rules for legislative approval, pursuant to article
127 three, chapter twenty-nine-a of this code, to implement this
128 section.

§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.

1 (a) *Legislative findings.* – The Legislature hereby finds
2 that it is in the public interest to regulate, control and support
3 the brewing, manufacturing, distribution, sale, consumption,
4 transportation and storage of nonintoxicating beer and
5 nonintoxicating craft beer and its industry in this state in
6 order to protect the public health, welfare and safety of the
7 citizens of this state and promote hospitality and tourism.
8 Therefore, this section authorizes a licensed brewpub, Class
9 A retail dealer, Class B retail dealer, private club, Class A
10 retail licensee or Class B retail licensee to have certain
11 abilities in order to promote the sale of nonintoxicating beer
12 and nonintoxicating craft beer manufactured in this state for
13 the benefit of the citizens of this state, the state's growing
14 brewing industry and the state's hospitality and tourism
15 industry, all of which are vital components for the state's
16 economy.

17 (b) *Sales of nonintoxicating beer.* – A licensed brewpub,
18 Class A retail dealer, Class B retail dealer, private club, Class A

19 retail licensee or Class B retail licensee who pays the fee in
20 subsection (i) of this section and meets the requirements of this
21 section may offer nonintoxicating beer or nonintoxicating craft
22 beer for retail sale to patrons from their licensed premises in a
23 growler for personal consumption only off of the licensed
24 premises and not for resale. Prior to the sale, the licensee shall
25 verify, using proper identification, that any patron purchasing
26 nonintoxicating beer or nonintoxicating craft beer is twenty-one
27 years of age or over and that the patron is not visibly
28 intoxicated. A licensee authorized under this section may not
29 sell, give or furnish alcoholic liquors, including wine, for
30 consumption off of its licensed premises, unless it is a private
31 club licensed to sell sealed wine for consumption off of the
32 licensed premises and meets the requirements set out in
33 subdivisions (j) and (l), section three, article eight, chapter sixty
34 of this code, for the sale of wine, not liquor.

35 (c) *Retail sales.* – Every licensee authorized under this
36 section shall comply with all the provisions of this article as
37 applicable to nonintoxicating beer retailers when conducting
38 sales of nonintoxicating beer or nonintoxicating craft beer
39 and shall be subject to all applicable requirements and
40 penalties in this article.

41 (d) *Payment of taxes and fees.* – A licensee authorized
42 under this section shall pay all taxes and fees required of
43 licensed nonintoxicating beer retailers, in addition to any
44 other taxes and fees required, and meet applicable licensing
45 provisions as required by this chapter and by rule of the
46 commissioner.

47 (e) *Advertising.* – A licensee authorized under this section
48 may advertise a particular brand or brands of nonintoxicating
49 beer or nonintoxicating craft beer and the price of the
50 nonintoxicating beer or nonintoxicating craft beer subject to
51 state and federal requirements or restrictions. The
52 advertisement may not encourage intemperance.

53 **(f) Growler requirements.** – A licensee authorized under
54 this section must fill a growler and patrons are not permitted
55 to access the secure area or fill a growler. A licensee
56 authorized under this section must sanitize, fill, securely seal
57 and label any growler prior to its sale. A licensee authorized
58 under this section may only offer for retail sale up to two 64-
59 ounce, or four 32-ounce, growlers of nonintoxicating beer or
60 nonintoxicating craft beer per customer per day for personal
61 consumption off of the licensed premises and not for resale.
62 A licensee under this section may refill a growler subject to
63 the requirements of this section. A licensee shall visually
64 inspect any growler before filling or refilling it. A licensee
65 may not fill or refill any growler that appears to be cracked,
66 broken, unsafe or otherwise unfit to serve as a sealed
67 beverage container.

68 **(g) Growler labeling.** – A licensee authorized under this
69 section selling growlers shall affix a conspicuous label on all
70 sold and securely sealed growlers listing the name of the
71 licensee selling the growler, the brand of the nonintoxicating
72 beer or nonintoxicating craft beer in the growler, the alcohol
73 content by volume of the nonintoxicating beer or
74 nonintoxicating craft beer in the growler and the date the
75 growler was filled or refilled, and, further, all labeling on the
76 growler shall be consistent with all federal labeling and
77 warning requirements.

78 **(h) Growler sanitation.** – A licensed brewer or resident
79 brewer authorized under this section shall clean and sanitize
80 all growlers he or she fills or refills in accordance with all
81 state and county health requirements prior to its sealing. In
82 addition, the licensed brewer or resident brewer shall sanitize,
83 in accordance with all state and county health requirements,
84 all taps, tap lines, pipe lines, barrel tubes and any other
85 related equipment used to fill or refill growlers. Failure to
86 comply with this subsection may result in penalties under
87 section twenty-three of this article.

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

93 (j) *Limitations on licensees.* – A licensee under this section
94 may only sell growlers during the hours of operation set forth
95 in subdivision (1), subsection (a), section eighteen of this
96 article. Any licensee licensed under this section must maintain
97 a secure area for the sale of nonintoxicating beer or
98 nonintoxicating craft beer in a growler. The secure area must
99 only be accessible by the licensee. Any licensee licensed under
100 this section shall be subject to the applicable penalties under
101 section twenty-three of this article for violations of this section.

102 (k) *Nonapplicability of certain statutes.* –
103 Notwithstanding any other provision of this code to the
104 contrary, licensees under this section are permitted to break
105 the seal of the original container for the limited purpose of
106 filling a growler as provided in this section. Any
107 unauthorized sale of nonintoxicating beer or nonintoxicating
108 craft beer or any consumption not permitted on the licensee’s
109 licensed premises is subject to penalties under this article.

110 (l) *Rules.* – The commissioner is authorized to propose
111 rules for legislative approval, pursuant to article three,
112 chapter twenty-nine-a of this code, to implement this section.

**§11-16-9. Amount of license tax; Class A and Class B retail dealers;
purchase and sale of nonintoxicating beer permitted;
distributors; brewers; brewpubs.**

1 (a) All retail dealers, distributors, brewpubs, brewers and
2 resident brewers of nonintoxicating beer and of
3 nonintoxicating craft beer shall pay an annual fee to maintain

17

[Enr. Com. Sub. for Com. Sub. for S. B. No. 273

4 an active license as required by this article. The license
5 period begins on July 1 of each year and ends on June 30 of
6 the following year. If the license is granted for a shorter
7 period, then the license fee shall be computed semiannually
8 in proportion to the remainder of the fiscal year.

9 (b) The annual license fees are as follows:

10 (1) Retail dealers shall be divided into two classes: Class
11 A and Class B.

12 (A) For a Class A retail dealer, the license fee is \$150
13 for each place of business; the license fee for social,
14 fraternal or private clubs not operating for profit, and
15 having been in continuous operation for two years or more
16 immediately preceding the date of application, is \$150:
17 *Provided*, That railroads operating in this state may
18 dispense nonintoxicating beer upon payment of an annual
19 license tax of \$10 for each dining, club or buffet car in
20 which the beer is dispensed.

21 Class A licenses issued for railroad dining, club or buffet
22 cars authorize the licensee to sell nonintoxicating beer at
23 retail for consumption only on the licensed premises where
24 sold. All other Class A licenses authorize the licensee to sell
25 nonintoxicating beer at retail for consumption on or off the
26 licensed premises.

27 (B) For a Class B retail dealer, the license fee,
28 authorizing the sale of both chilled and unchilled beer, is
29 \$150 for each place of business. A Class B license authorizes
30 the licensee to sell nonintoxicating beer at retail in bottles,
31 cans or other sealed containers only, and only for
32 consumption off the licensed premises. A Class B retailer
33 may sell to a patron, for personal use and not for resale,
34 quantities of draught beer in original containers that are no

35 larger in size than one-half barrel for off-premises
36 consumption.

37 A Class B license may be issued only to the proprietor or
38 owner of a grocery store. For the purpose of this article, the
39 term "grocery store" means any retail establishment
40 commonly known as a grocery store or delicatessen, and
41 caterer or party supply store, where food or food products are
42 sold for consumption off the premises, and includes a
43 separate and segregated portion of any other retail store
44 which is dedicated solely to the sale of food, food products
45 and supplies for the table for consumption off the premises.
46 Caterers or party supply stores are required to purchase the
47 appropriate licenses from the Alcohol Beverage Control
48 Administration.

49 (2) For a distributor, the license fee is \$1,000 for each
50 place of business.

51 (3) For a brewer or a resident brewer with its principal
52 place of business or manufacture located in this state and who
53 produces:

54 (A) Twelve thousand five hundred barrels or less of
55 nonintoxicating beer or nonintoxicating craft beer, the license
56 fee is \$500 for each place of manufacture;

57 (B) Twelve thousand five hundred one barrels and up to
58 twenty-five thousand barrels of nonintoxicating beer or
59 nonintoxicating craft beer, the license fee is \$1,000 for each
60 place of manufacture;

61 (C) More than twenty-five thousand one barrels of
62 nonintoxicating beer or nonintoxicating craft beer, the license
63 fee is \$1,500 for each place of manufacture.

64 (4) For a brewer whose principal place of business or
65 manufacture is not located in this state, the license fee is
66 \$1,500. The brewer is exempt from the requirements set out
67 in subsections (c), (d) and (e) of this section: *Provided*, That
68 a brewer whose principal place of business or manufacture is
69 not located in this state that produces less than twenty-five
70 thousand barrels of nonintoxicating beer or nonintoxicating
71 craft beer may choose to apply in writing to the commissioner
72 to be subject to the variable license fees of subdivision (3),
73 subsection (b) of this section and the requirements set out in
74 subsections (c), (d) and (e) of this section subject to
75 investigation and approval by the commissioner as to brewer
76 requirements.

77 (5) For a brewpub, the license fee is \$500 for each place
78 of manufacture.

79 (c) As part of the application or renewal application and
80 in order to determine a brewer or resident brewer's license
81 fee pursuant to this section, a brewer or resident brewer shall
82 provide the commissioner, on a form provided by the
83 commissioner, with an estimate of the number of
84 nonintoxicating beer or nonintoxicating craft beer barrels and
85 gallons it will produce during the year based upon the
86 production capacity of the brewer's or resident brewer's
87 manufacturing facilities, and the prior year's production and
88 sales volume of nonintoxicating beer or nonintoxicating craft
89 beer.

90 (d) On or before July 15 of each year, every brewer or
91 resident brewer who is granted a license shall file a final
92 report, on a form provided by the commissioner, that is dated
93 as of June 30 of each year, stating the actual volume of
94 nonintoxicating beer or nonintoxicating craft beer in barrels
95 and gallons produced at its principal place of business and
96 manufacture during the prior year.

97 (e) If the actual total production of nonintoxicating beer
98 or nonintoxicating craft beer by the brewer or resident brewer
99 exceeded the brewer's or resident brewer's estimate that was
100 filed with the application or renewal for a brewer's or
101 resident brewer's license for that period, then the brewer or
102 resident brewer shall include a remittance for the balance of
103 the license fee pursuant to this section that would be required
104 for the final, higher level of production.

105 (f) Any brewer or resident brewer failing to file the
106 reports required in subsections (c) and (d) of this section, and
107 who is not exempt from the reporting requirements, shall, at
108 the discretion of the commissioner, be subject to the penalties
109 set forth in section twenty-three of this article.

**§11-16-12. Bond of brewer, distributor, and Class A retail dealer; action
on bond of retail dealer upon revocation of license; duty of
prosecuting attorney.**

1 (a) In addition to furnishing the information required by
2 this article, each brewer or distributor applying for a license
3 under this article shall furnish, as prerequisite to a license, a
4 bond with some solvent surety company as surety, to be
5 approved by the commissioner, payable to the state of West
6 Virginia, conditioned for the payment of any and all
7 additional taxes accruing during the period of such license,
8 and conditioned further for the faithful observance of the
9 provisions of this article, the rules, regulations and orders
10 promulgated pursuant thereto and of any other laws of the
11 state of West Virginia generally relating to the sale,
12 transportation, storage and distribution of nonintoxicating
13 beer, which said bonds shall be forfeited to the state upon the
14 revocation of the license of any such brewer or distributor.
15 The amount of such bond in the case of a resident brewer
16 shall be not less than \$5,000 nor more than \$10,000 and in
17 the case of a distributor, not less than \$2,000 nor more than

18 \$5,000 for each place of business licensed and conducted
19 within the state, the amount of such bond, between the
20 minimum and maximum amounts, to be determined in the
21 discretion of the commissioner. There shall be no bond for
22 a brewpub license, as the license privilege itself secures the
23 payment of taxes and is subject to suspension and revocation
24 for failure to pay said taxes. In the case of brewers shipping
25 nonintoxicating beer into the state, any brewer must also
26 furnish a bond in a penalty of not less than \$5,000 nor more
27 than \$25,000 conditioned as hereinabove in this subsection
28 provided and any bond furnished pursuant hereto shall be
29 forfeited to the state in the full amount of said bond upon
30 revocation of license of any such brewer or distributor. Such
31 money received by the state shall be credited to the State
32 Fund, General Revenue.

33 (b) Each Class A retail dealer, in addition to furnishing
34 the information required by this article, shall furnish, as
35 prerequisite to obtaining a license, a bond with some solvent
36 surety company as surety, to be approved by the
37 commissioner, payable to the state of West Virginia, in the
38 amount not less than \$500 nor more than \$1000 within the
39 discretion of the commissioner. All such bonds shall be
40 conditioned for the faithful observance of the provisions of
41 this article, the rules, regulations and orders promulgated
42 pursuant thereto and of any other laws of the state of West
43 Virginia generally relating to the distribution, sale and
44 dispensing of nonintoxicating beer and shall be forfeited to
45 the state in the full amount of said bond upon the revocation
46 of the license of any such retail dealer. Such money received
47 by the state shall be credited to the State Fund, General
48 Revenue.

49 (c) Upon the revocation of the license of any Class A
50 retail dealer by the commissioner or by any court of
51 competent jurisdiction, the commissioner or the clerk of said

52 court shall notify the prosecuting attorney of the county
53 wherein such retail dealer's place of business is located, or
54 the prosecuting attorney of the county wherein the licensee
55 resides, of such revocation, and, upon receipt of said notice,
56 it shall be the duty of such prosecuting attorney forthwith to
57 institute appropriate proceedings for the collection of the full
58 amount of said bond. Upon request of such prosecuting
59 attorney, the commissioner shall deliver the bond to him.
60 Willful refusal without just cause therefor by the prosecuting
61 attorney to perform said duty hereby imposed shall subject
62 him to removal from office by the circuit court of the county
63 for which said prosecuting attorney was elected upon proper
64 proceedings and proof in the manner provided by law.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Paul R. Spencer
.....
Chairman Senate Committee

John B. McC
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Mark Barnes
.....
Clerk of the Senate

Scott J. Hanna
.....
Clerk of the House of Delegates

William Palmer
.....
President of the Senate

Charles P. Price
.....
Speaker of the House of Delegates

The within *is approved* this the *24th*
Day of *March*, 2015.

Carl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 19 2015

Time 11:20 am