

COMMITTEE SUBSTITUTE

FOR

H. B. 3174

(BY DELEGATES BROWN, FRAGALE, MOORE AND SKAFF)

(Originating in the Committee on the Judiciary)
[February 15, 2012]

A BILL 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.

1 §11-16-3. Definitions.

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

4 (1) “Brewer” or “manufacturer” means any person, firm,
5 association, partnership or corporation manufacturing,
6 brewing, mixing, concocting, blending, bottling or otherwise
7 producing or importing or transshipping from a foreign

8 country nonintoxicating beer for sale at wholesale to any
9 licensed distributor.

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

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

17 (4) “Commissioner” means the West Virginia Alcohol
18 Beverage Control Commissioner.

19 ~~(4)~~(5) “Distributor” means and includes any person
20 jobbing or distributing nonintoxicating beer to retailers at
21 wholesale and whose warehouse and chief place of business
22 shall be within this state.

23 (6) “Freestanding liquor retail outlet” means a retail
24 outlet that sells only liquor, beer, nonintoxicating beer and
25 other alcohol-related products, as defined pursuant to section
26 four, article three-a, chapter sixty of this code.

27 ~~(5)~~(7) “Nonintoxicating beer” means all cereal malt
28 beverages or products of the brewing industry commonly
29 referred to as beer, lager beer, ale and all other mixtures and
30 preparations produced by the brewing industry, including malt
31 coolers and nonintoxicating craft beers containing at least one
32 half of one percent alcohol by volume, but not more than nine
33 and six-tenths of alcohol by weight, or twelve percent by
34 volume, whichever is greater, all of which are hereby declared
35 to be nonintoxicating and the word “liquor” as used in chapter
36 sixty of this code shall not be construed to include or embrace
37 nonintoxicating beer nor any of the beverages, products,
38 mixtures or preparations included within this definition.

39 (8) “Nonintoxicating beer sampling event” means an
40 event approved by the commissioner for a Class A retail
41 licensee to hold a nonintoxicating beer sampling authorized
42 pursuant to section eleven-a of this article.

43 (9) “Nonintoxicating beer sampling day” means any days
44 and hours of the week where Class A retail licensees may

45 sell nonintoxicating beer pursuant to sub-section (a)(1),
46 section eighteen of this article, and is approved, in writing,
47 by the commissioner to conduct a nonintoxicating beer
48 sampling event.

49 ~~(6)~~(10) “Nonintoxicating craft beer” means any beverage
50 obtained by the fermentation of barley, malt, hops or any
51 other similar product or substitute and containing not less
52 than one half of one percent by volume and not more than
53 twelve percent alcohol by volume or nine and six-tenths
54 percent alcohol by weight.

55 ~~(7)~~(11) “Original container” means the container used by
56 the brewer at the place of manufacturing, bottling or otherwise
57 producing nonintoxicating beer for sale at wholesale.

58 ~~(8)~~(12) “Person” means and includes an individual, firm,
59 partnership, limited partnership, association or corporation.

60 ~~(9)~~(13) “Resident brewer” means any person, firm,
61 association, partnership, or corporation whose principal place
62 of business is within the state.

63 ~~(10)~~(14) “Retailer” means any person selling, serving, or
64 otherwise dispensing nonintoxicating beer and all products
65 regulated by this article, including, but not limited to, any
66 malt cooler, at his or her established and licensed place of
67 business.

68 ~~(11)~~(15) “Tax Commissioner” means the Tax
69 Commissioner of the State of West Virginia or the
70 commissioner’s designee.

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

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

6 (b) At least five business days prior to the
7 nonintoxicating beer sampling, the Class A retail licensee
8 shall submit a written proposal to the commissioner

9 requesting to hold a nonintoxicating beer sampling event,

10 including:

11 (1) The day of the event;

12 (2) The location of the event;

13 (3) The times for the event;

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

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

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

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

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

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

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

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

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

35 (3) Have specific knowledge of the nonintoxicating beer
36 being sampled to convey to the customer.

37 (f) All servers at the nonintoxicating beer sampling event
38 shall verify the age of the customer sampling nonintoxicating
39 beer by requiring and reviewing proper forms of
40 identification. Servers at the nonintoxicating beer event may
41 not serve any person who is:

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

43 (2) Intoxicated.

44 (g) A nonintoxicating beer sampling event shall:

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

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

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

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

61 (j) To implement the provisions of this section, the
62 commissioner may promulgate emergency rules pursuant to
63 the provisions of section fifteen, article three, chapter twenty-
64 nine-a of this code or propose rules for legislative approval
65 in accordance with the provisions of article three, chapter
66 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.

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

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

9 (1) The day of the event;

10 (2) The location of the event;

11 (3) The times for the event; and

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

14 (c) Upon approval by the commissioner, a Class A retail
15 licensee may serve a complimentary liquor sample of the
16 approved brand and flavor of the West Virginia product that
17 is purchased by the Class A retail licensee from the
18 commissioner.

19 (d) The complimentary liquor samples on any sampling
20 day shall not exceed:

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

23 (2) One ounce in total volume.

24 (e) Servers at the liquor sampling event shall:

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

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

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

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

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

34 (2) Intoxicated.

35 (g) A liquor sampling event shall:

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

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

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

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

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

§60-3A-4. Definitions.

1 (a) “Active retail license” means a current license for a
2 retail outlet that has been open and in continuous operation
3 for a period of not less than twelve months prior to July 1,
4 2010, or July 1 every ten years thereafter.

5 (b) “Active retail licensee” means a person who holds an
6 active retail license at the time of the effective date of the
7 amendments to this section during the first extraordinary
8 session of the Legislature in 2009 or that person’s successor

9 or any person who holds an active retail license when it
10 expires at the end of a ten-year period.

11 (c) “Applicant” means any person who elects to pay a
12 purchase option for a Class A retail license, who bids for a
13 retail license or who seeks the commissioner’s approval to
14 purchase or otherwise acquire a retail license from a retail
15 licensee, in accordance with the provisions of this article.

16 (d) “Application” means the form prescribed by the
17 commissioner which must be filed with the commissioner by
18 any person bidding for a retail license.

19 (e) “Board” means the Retail Liquor Licensing Board
20 created by this article.

21 (f) “Class A retail license” means a retail license
22 permitting the retail sale of liquor at a freestanding liquor
23 retail outlet.

24 (g) “Class B retail license” means a retail license
25 permitting the sale of liquor at a mixed retail liquor outlet.

26 (h) “Current retail licensee” means a person who holds
27 a retail license at the time of the effective date of the

28 amendments to this section during the first extraordinary
29 session of the Legislature in 2009 or that person's successor
30 or any person who holds a retail license when it expires at
31 the end of a ten-year period.

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

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

41 (k) "Freestanding liquor retail outlet" means a retail
42 outlet that sells only liquor, beer, nonintoxicating beer and
43 other alcohol-related products, including tobacco-related
44 products.

45 (l) "Liquor" means alcoholic liquor as defined in section
46 five, article one of this chapter and also includes both wine

47 and fortified wines as those terms are defined in section two,
48 article eight of this chapter.

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

53 ~~(m)~~ (n) “Market zone” means a geographic area
54 designated as such by the board for the purpose of issuing
55 retail licenses.

56 ~~(n)~~ (o) “Mixed retail liquor outlet” means a retail outlet
57 that sells liquor, beer, nonintoxicating beer and other
58 alcohol-related products, including tobacco-related products,
59 in addition to convenience and other retail products.

60 ~~(o)~~ (p) “Person” means an individual, firm, corporation,
61 association, partnership, limited partnership, limited liability
62 company or other entity, regardless of its form, structure or
63 nature.

64 ~~(p)~~ (q) “Retail license” means a license issued under the
65 provisions of this article permitting the sale of liquor at retail.

66 ~~(q)~~ (r) “Retail licensee” means the holder of a retail
67 license.

68 ~~(r)~~ (s) “Retail outlet” means a specific location where
69 liquor may be lawfully sold by a retail licensee under the
70 provisions of this article.

71 (t) “Sampling day” means any days and hours of the
72 week where retail licensees may sell liquor pursuant to
73 section eighteen, article three-a, chapter sixty of this code for
74 a Class A retail licensee to conduct a liquor sampling event.

75 (u) “West Virginia product” means all liquor types and
76 classes as approved by the commissioner and maintained on
77 the ABCA retail liquor product list.