

H. B. 2956

(BY DELEGATE(S) MILEY, BOGGS, MANCHIN, MARCUM,
FERRO, REYNOLDS AND ASHLEY)

[Introduced March 18, 2013; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §11-16-3 and §11-16-6 of the Code of West Virginia, 1931, as amended, all relating to resident brewers and brewpubs; and clarifying certain requirements and operations relating to distribution and sales.

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.

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

3 (1) “Brewer” or “manufacturer” means any person, firm,
4 association, partnership or corporation manufacturing, brewing,
5 mixing, concocting, blending, bottling or otherwise producing or
6 importing or transshipping from a foreign country nonintoxicat-
7 ing beer or nonintoxicating craft beer for sale at wholesale to any
8 licensed distributor.

9 (2) “Brewpub” means a place of manufacture of nonintoxi-
10 cating beer owned by a resident brewer, subject to federal and
11 state regulations and guidelines, a portion of which premises are
12 designated for retail sales of nonintoxicating beer or nonintoxi-
13 cating craft beer by the resident brewer owning the brewpub.

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

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

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

23 (6) “Growler” means a glass container or jug utilized by a
24 brewpub for only off-premise sales of nonintoxicating beer or
25 nonintoxicating craft beer for personal consumption not on a
26 licensed premise and not for resale. The growler may not be
27 more than a half-gallon in size and must be sealed with a rubber
28 gasket or other secure apparatus approved by the commissioner
29 and placed in bag before a patron leaves the brewpub’s licensed
30 premise with a growler.

31 ~~(6)~~ (7) “Freestanding liquor retail outlet” means a retail
32 outlet that sells only liquor, beer, nonintoxicating beer and other
33 alcohol-related products, as defined pursuant to section four,
34 article three-a, chapter sixty of this code.

35 ~~(7)~~ (8) “Nonintoxicating beer” means all natural cereal malt
36 beverages or products of the brewing industry commonly
37 referred to as beer, lager beer, ale and all other mixtures and
38 preparations produced by the brewing industry, including malt
39 coolers and nonintoxicating craft beers with no caffeine infusion
40 or any additives masking or altering the alcohol effect containing
41 at least one half of one percent alcohol by volume, but not more
42 than nine and six-tenths of alcohol by weight, or twelve percent

43 by volume, whichever is greater, all of which are hereby
44 declared to be nonintoxicating and the word “liquor” as used in
45 chapter sixty of this code shall not be construed to include or
46 embrace nonintoxicating beer nor any of the beverages, products,
47 mixtures or preparations included within this definition.

48 ~~(8)~~ (9) “Nonintoxicating beer sampling event” means an
49 event approved by the commissioner for a Class A retail
50 Licensee to hold a nonintoxicating beer sampling authorized
51 pursuant to section eleven-a of this article.

52 ~~(9)~~ (10) “Nonintoxicating beer sampling day” means any
53 days and hours of the week where Class A retail licensees may
54 sell nonintoxicating beer pursuant to sub-section (a)(1), section
55 eighteen of this article, and is approved, in writing, by the
56 commissioner to conduct a nonintoxicating beer sampling event.

57 ~~(10)~~ (11) “Nonintoxicating craft beer” means any beverage
58 obtained by the natural fermentation of barley, malt, hops or any
59 other similar product or substitute and containing not less than
60 one half of one percent by volume and not more than twelve
61 percent alcohol by volume or nine and six-tenths percent alcohol
62 by weight with no caffeine infusion or any additives masking or
63 altering the alcohol effect.

64 ~~(11)~~ (12) “Original container” means the container used by
65 the brewer at the place of manufacturing, bottling or otherwise
66 producing nonintoxicating beer for sale at wholesale.

67 ~~(12)~~ (13) “Person” means and includes an individual, firm,
68 partnership, limited partnership, association or corporation.

69 ~~(13)~~ (14) “Resident brewer” means any ~~person, firm,~~
70 ~~association, partnership, or corporation~~ brewer or manufacturer
71 of not more than 10,000 gallons annually per year of nonintoxi-
72 cating beer or nonintoxicating craft beer whose principal place
73 of business and manufacture is located within the State of West
74 Virginia.

75 ~~(14)~~ (15) “Retailer” means any person selling, serving, or
76 otherwise dispensing nonintoxicating beer and all products
77 regulated by this article, including, but not limited to, any malt
78 cooler, at his or her established and licensed place of business.

79 ~~(15)~~ (16) “Tax Commissioner” means the Tax Commissioner
80 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 distribu-
tor; credit and rebates proscribed; brewpub.**

- 1 (a) No person shall be licensed in more than one capacity
- 2 under the terms of this article, and there shall be no connection

3 whatsoever between any retailer, ~~or~~ distributor, resident brewer
4 or brewer, and no person shall be interested directly or indirectly
5 through the ownership of corporate stock, membership in a
6 partnership, or in any other way in the business of a retailer, if
7 such person is at the same time interested in the business of a
8 brewer, resident brewer or distributor. A resident brewer ~~whose~~
9 ~~place of brewing or manufacture is located within the State of~~
10 ~~West Virginia~~ may act as distributor ~~of his~~ in a limited capacity
11 for his or her own product from such resident brewery, place of
12 manufacture or bottling, but ~~must have a distributor's license for~~
13 ~~distribution from a place other than the place of brewing or~~
14 ~~manufacture~~ a resident brewer is not permitted to act as a
15 distributor as defined in section three of this article: *Provided,*
16 That nothing in this article may prevent a resident brewer from
17 using the services of licensed distributors as specified in this
18 article. A resident brewer or distributor may sell to a consumer
19 for personal use and not for resale, draught beer in quantities of
20 one-eighth, one-fourth and one-half barrels in the original
21 containers. A resident brewer owning a brewpub may sell
22 nonintoxicating beer or nonintoxicating craft beer produced by

23 the brewpub in a sealed growler, cans or bottles for personal
24 consumption off of a licensed premise and not for resale.

25 (b) It ~~shall be~~ 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 any gifts or loans or forbearance of money or
29 property of any kind, nature or description, or other thing of
30 value or by the giving of 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 this
33 article.

34 Notwithstanding paragraphs (a) and (b) above, a brewpub
35 may ~~manufacture and~~ offer for retail sale nonintoxicating beer or
36 nonintoxicating craft beer so long as the sale of the nonintoxicat-
37 ing beer or nonintoxicating craft beer is limited to the brewpub
38 premises, except for up to two growlers per customer for
39 personal consumption off of a licensed premises and not for
40 resale.

NOTE: The purpose of this bill is to clarify certain requirements and operations relating to distribution and sales of resident brewers and brewpubs.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

The Committee on the Judiciary moves to amend the title of the bill as follows:

H. B. 2956 – “A BILL to amend and reenact §11-16-3 and §11-16-6 of the Code of West Virginia, 1931, as amended, all relating to resident brewers and brewpubs; clarifying and amending applicable definitions; clarifying certain requirements and operations relating to distribution and sales at brewpubs; and allowing for the limited sale of nonintoxicating beer and nonintoxicating craft beer by brewpubs for personal consumption off premises and not for resale.”