

# **E N R O L L E D**

## **H. B. 2956**

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

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[Passed April 13, 2013; in effect ninety days from passage.]

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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 non-intoxicating beer and non-intoxicating craft beer that a resident brewer may self-distribute; prohibiting addition or infusion of non-intoxicating 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.**

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. For purposes of a distributor  
23 only, the term “person” means and includes an individual, firm,  
24 trust, partnership, limited partnership, limited liability company,  
25 association or corporation. Any trust licensed as a distributor or

26 any trust that is an owner of a distributor licensee, and the trustee  
27 or other persons in active control of the activities of the trust  
28 relating to the distributor license, is liable for acts of the trust or  
29 its beneficiaries relating to the distributor license that are  
30 unlawful acts or violations of article eleven of this chapter  
31 notwithstanding the liability of trustees in article ten, chapter  
32 forty-four-d of this code.

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

37 (7) “Growler” means a glass ceramic or metal container or  
38 jug, capable of being securely sealed, utilized by a brewpub for  
39 purposes of off-premise sales of nonintoxicating beer or nonin-  
40 toxicating craft beer for personal consumption not on a licensed  
41 premise and not for resale.

42 (8) “Nonintoxicating beer” means all natural cereal malt  
43 beverages or products of the brewing industry commonly  
44 referred to as beer, lager beer, ale and all other mixtures and  
45 preparations produced by the brewing industry, including malt  
46 coolers and nonintoxicating craft beers with no caffeine infusion  
47 or any additives masking or altering the alcohol effect containing  
48 at least one half of one percent alcohol by volume, but not more  
49 than nine and six-tenths of alcohol by weight, or twelve percent  
50 by volume, whichever is greater. The word “liquor” as used in  
51 chapter sixty of this code does not include or embrace nonintoxi-  
52 cating beer nor any of the beverages, products, mixtures or  
53 preparations included within this definition.

54 (9) “Nonintoxicating beer sampling event” means an event  
55 approved by the commissioner for a Class A retail Licensee to  
56 hold a nonintoxicating beer sampling authorized pursuant to  
57 section eleven-a of this article.

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

63       (11) “Nonintoxicating craft beer” means any beverage  
64 obtained by the natural fermentation of barley, malt, hops or any  
65 other similar product or substitute and containing not less than  
66 one half of one percent by volume and not more than twelve  
67 percent alcohol by volume or nine and six-tenths percent alcohol  
68 by weight with no caffeine infusion or any additives masking or  
69 altering the alcohol effect.

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

73       (13) “Person” means and includes an individual, firm,  
74 partnership, limited partnership, limited liability company,  
75 association or corporation.

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

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

88       (16) “Tax Commissioner” means the Tax Commissioner of  
89 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.**

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, distributor, resident brewer or  
4 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 may act  
9 as distributor in a limited capacity for his or her own product  
10 from such resident brewery, place of manufacture or bottling, but  
11 a resident brewer is not permitted to act as a distributor as  
12 defined in section three of this article: *Provided*, That nothing in  
13 this article may prevent a resident brewer from using the services  
14 of licensed distributors as specified in this article. A resident  
15 brewer or distributor may sell to a consumer for personal use and  
16 not for resale, draught beer in quantities of one-eighth, one-  
17 fourth and one-half barrels in the original containers. A resident  
18 brewer owning a brewpub may sell nonintoxicating beer or  
19 nonintoxicating craft beer produced by the brewpub in a sealed  
20 growler, cans or bottles for personal consumption off of a  
21 licensed premise and not for resale.

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

30       Notwithstanding paragraphs (a) and (b) above, a brewpub  
31 may offer for retail sale nonintoxicating beer or nonintoxicating

32 craft beer so long as the sale of the nonintoxicating beer or  
33 nonintoxicating craft beer is limited to the brewpub premises,  
34 except for up to two growlers per customer for personal con-  
35 sumption off of a licensed premises and not for resale.

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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2013.

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*Governor*

