

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 273**

4 (By Senators Cole (Mr. President) and Kessler,

5 By Request of the Executive)

6 _____
7 [Originating in the Committee on Economic Development;

8 reported February 12, 2015.]

**FISCAL
NOTE**

9 _____
10
11 A BILL to amend and reenact §11-16-3, §11-16-6, §11-16-9 and §11-16-12 of the Code of West
12 Virginia, 1931, as amended; and to amend said code by adding thereto two new sections,
13 designated §11-16-6a and §11-16-6b, all relating to brewer, resident brewer and brewpub
14 licensing and operations; clarifying definitions; providing legislative findings; authorizing
15 licensed brewers and resident brewers to offer complimentary nonintoxicating beer and
16 nonintoxicating craft beer samples; authorizing licensed brewers and resident brewers to sell
17 growlers with limitations; authorizing licensed brewpubs, Class A retail dealers, Class B
18 retail dealers, private clubs, Class A retail licensees and Class B retail licensees to sell
19 growlers with limitations; clarifying licensing and operational requirements for brewers,
20 resident brewers and brewpubs; changing the license fee schedule for certain brewers and
21 resident brewers; decreasing the license fee for brewpubs; requiring brewers and resident
22 brewers to submit annual reports of production; and removing brewpub bonding

1 requirements.

2 *Be it enacted by the Legislature of West Virginia:*

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

6 **ARTICLE 16. NONINTOXICATING BEER.**

7 **§11-16-3. Definitions.**

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

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

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

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

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

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

5 ~~(5)~~ (6) "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner.

6 ~~(6)~~ (7) "Distributor" means and includes any person jobbing or distributing nonintoxicating
7 beer or nonintoxicating craft beer to retailers at wholesale and whose warehouse and chief place of
8 business shall be within this state. For purposes of a distributor only, the term "person" means and
9 includes an individual, firm, trust, partnership, limited partnership, limited liability company,
10 association or corporation. Any trust licensed as a distributor or any trust that is an owner of a
11 distributor licensee, and the trustee or other persons in active control of the activities of the trust
12 relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the
13 distributor license that are unlawful acts or violations of article eleven of this chapter
14 notwithstanding the liability of trustees in article ten, chapter forty-four-d of this code.

15 ~~(7)~~ (8) "Franchise agreement" means the written agreement between a brewer and a
16 distributor that is identical as to terms and conditions between the brewer and all its distributors,
17 which agreement has been approved by the commissioner. The franchise agreement binds the parties
18 so that a distributor, appointed by a brewer, may distribute all of the brewer's nonintoxicating beer
19 products, brands or family of brands imported and offered for sale in West Virginia, including, but
20 not limited to, existing brands, line extensions and new brands all in the brewer's assigned territory
21 for the distributor. All brands and line extensions being imported or offered for sale in West Virginia

1 must be listed by the brewer in the franchise agreement or a written amendment to the franchise
2 agreement. A franchise agreement may be amended by mutual written agreement of the parties as
3 approved by the commissioner with identical terms and conditions for a brewer and all of its
4 distributors. Any approved amendment to the franchise agreement becomes a part of the franchise
5 agreement. A brewer and a distributor may mutually agree in writing to cancel a franchise agreement.
6 A distributor terminated by a brewer as provided in this article and the promulgated rules no longer
7 has a valid franchise agreement. If a brewer has reached an agreement to cancel a distributor or has
8 terminated a distributor, then a brewer may appoint a successor distributor who accedes to all the
9 rights of the cancelled or terminated distributor.

10 ~~(8)~~ (9) "Franchise distributor network" means the distributors who have entered into a
11 binding written franchise agreement, identical as to terms and conditions, to distribute
12 nonintoxicating beer products, brands and line extensions in an assigned territory for a brewer. A
13 brewer may only have one franchise distributor network: *Provided*, That a brewer that has acquired
14 the manufacturing, bottling or other production rights for the sale of nonintoxicating beer at
15 wholesale from a selling brewer as specified in subdivision (2), subsection (a), section twenty-one
16 of this article shall continue to maintain and be bound by the selling brewer's separate franchise
17 distributor's network for any of its existing brands, line extensions and new brands.

18 ~~(9)~~ (10) "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, beer,
19 nonintoxicating beer and other alcohol-related products, as defined pursuant to section four, article
20 three-a, chapter sixty of this code.

21 ~~(10)~~ (11) "Growler" means a container or jug that is made of glass, ceramic, ~~or~~ metal

1 ~~container or jug~~ or other material approved by the commissioner, that may be up to one-hundred
2 twenty-eight ounces or a gallon in size and must be capable of being securely sealed. The growler
3 is utilized by a brewpub an authorized licensee for purposes of off-premise sales only of
4 nonintoxicating beer or nonintoxicating craft beer for personal consumption not on a licensed
5 premise and not for resale. Notwithstanding any other provision of this code to the contrary, a
6 securely sealed growler is not an open container under federal, state and local law. A growler with
7 a broken seal is an open container under federal, state and local law. The secure sealing of a growler
8 requires the use of a tamper-resistant seal, security tape or other material, as approved by the
9 commissioner, placed on or over the growler's opening, which seal, security tape or other material
10 is clearly marked with the date of the secure sealing.

11 ~~(11)~~ (12) "Line extension" means any nonintoxicating beer product that is an extension of
12 brand or family of brands that is labeled, branded, advertised, marketed, promoted or offered for sale
13 with the intent or purpose of being manufactured, imported, associated, contracted, affiliated or
14 otherwise related to a brewer's existing brand through the use of a brewer, its subsidiaries, parent
15 entities, contracted entities, affiliated entities or other related entities'. In determining whether a
16 nonintoxicating beer product is a line extension, the commissioner may consider, but is not limited
17 to, the following factors: name or partial name; trade name or partial trade name; logos; copyrights;
18 trademarks or trade design; product codes; advertising promotion or pricing.

19 ~~(12)~~ (13) "Nonintoxicating beer" means all natural cereal malt beverages or products of the
20 brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and
21 preparations produced by the brewing industry, including malt coolers and nonintoxicating craft
22 beers with no caffeine infusion or any additives masking or altering the alcohol effect containing at

1 least one half of one percent alcohol by volume, but not more than nine and six-tenths of alcohol by
2 weight, or twelve percent by volume, whichever is greater. The word "liquor" as used in chapter sixty
3 of this code does not include or embrace nonintoxicating beer nor any of the beverages, products,
4 mixtures or preparations included within this definition.

5 ~~(13)~~ (14) "Nonintoxicating beer sampling event" means an event approved by the
6 commissioner for a Class A retail Licensee to hold a nonintoxicating beer sampling authorized
7 pursuant to section eleven-a of this article.

8 ~~(14)~~ (15) "Nonintoxicating beer sampling day" means any days and hours of the week where
9 Class A retail licensees may sell nonintoxicating beer pursuant to section eleven-a and subdivision
10 (1), subsection (a), section eighteen of this article, and is approved, in writing, by the commissioner
11 to conduct a nonintoxicating beer sampling event.

12 ~~(15)~~ (16) "Nonintoxicating craft beer" means any beverage obtained by the natural
13 fermentation of barley, malt, hops or any other similar product or substitute and containing not less
14 than one half of one percent by volume and not more than twelve percent alcohol by volume or nine
15 and six-tenths percent alcohol by weight with no caffeine infusion or any additives masking or
16 altering the alcohol effect.

17 ~~(16)~~ (17) "Original container" means the container used by ~~the~~ a resident brewer or brewer
18 at the place of manufacturing, bottling or otherwise producing nonintoxicating beer or
19 nonintoxicating craft beer for sale at wholesale.

20 ~~(17)~~ (18) "Person" means and includes an individual, firm, partnership, limited partnership,
21 limited liability company, association or corporation.

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

3 ~~(18)~~ (20) "Resident brewer" means any brewer or manufacturer of nonintoxicating beer or
4 nonintoxicating craft beer whose principal place of business and manufacture is located in the State
5 of West Virginia and which does not brew or manufacture more than twenty- five thousand barrels
6 of nonintoxicating beer or nonintoxicating craft beer annually, and does not self-distribute more than
7 ten thousand barrels thereof in the State of West Virginia annually.

8 ~~(19)~~ (21) "Retailer" means any person selling, serving, or otherwise dispensing
9 nonintoxicating beer and all products regulated by this article, including, but not limited to, malt
10 coolers at his or her established and licensed place of business.

11 ~~(20)~~ (22) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia
12 or the commissioner's designee.

13 **§11-16-6. License in one capacity only; no connection between different licensees; when**
14 **brewer may act as distributor; credit and rebates proscribed; brewer, resident**
15 **brewer and brewpub requirements.**

16 (a) No person shall be licensed in more than one capacity under the terms of this article, and
17 there shall be no connection whatsoever between any retailer, distributor, resident brewer or brewer,
18 and no person shall be interested directly or indirectly through the ownership of corporate stock,
19 membership in a partnership, or in any other way in the business of a retailer, if such person is at the
20 same time interested in the business of a brewer, resident brewer or distributor. A resident brewer
21 may act as distributor in a limited capacity for his or her own product from such resident brewery,

1 place of manufacture or bottling, but a resident brewer is not permitted to act as a distributor as
2 defined in section three of this article: *Provided*, That nothing in this article may prevent a resident
3 brewer from using the services of licensed distributors as specified in this article. A resident brewer
4 or distributor may sell to a consumer patron for personal use and not for resale, quantities of draught
5 beer in quantities of one-eighth, one-fourth and in original containers that are no larger in size than
6 one-half barrels in the original containers barrel for off-premises consumption. A resident brewer
7 ~~owning who also has a brewpub license~~ may sell nonintoxicating beer or nonintoxicating craft beer
8 produced by the brewpub resident brewer in ~~a sealed growler cans, or bottles~~ or sealed growlers,
9 pursuant to section six-b of this article, for personal consumption off of a the brewpub's licensed
10 premise premises and not for resale.

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

17 (c) Notwithstanding ~~paragraphs subsections~~ subsections (a) and (b) above of this section, a brewpub may
18 offer for retail sale nonintoxicating beer or nonintoxicating craft beer so long as the sale of the
19 nonintoxicating beer or nonintoxicating craft beer is limited to the brewpub's licensed premises,
20 ~~except for up to two growlers per customer for personal consumption off of a licensed premises and~~
21 ~~not for resale~~ as provided in section six-b of this article.

22 **§11-16-6a. Brewer and resident brewer license to manufacture, sell and provide**

1 **complimentary samples.**

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

12 (b) *Sales of nonintoxicating beer.* -- A licensed brewer or resident brewer with its principal
13 place of business and manufacture located in the State of West Virginia may offer only
14 nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident
15 brewer for retail sale to customers from the brewer's or resident brewer's licensed premises for
16 consumption off the licensed premises only in the form of kegs, bottles, cans or growlers for personal
17 consumption and not for resale. A licensed brewer or resident brewer may not sell, give or furnish
18 nonintoxicating beer for consumption on the premises of the principal place of business and
19 manufacture located in the State of West Virginia, except for the limited purpose of complimentary
20 samples as permitted in subsection (c) of this section.

21 (c) *Complimentary samples.* -- A licensed brewer or resident brewer with its principal place
22 of business and manufacture located in the State of West Virginia may only offer complimentary

1 samples of nonintoxicating beer or nonintoxicating craft beer brewed at the brewer's or resident
2 brewer's principal place of business and manufacture located in the State of West Virginia. The
3 complimentary samples may be no greater than two ounces per sample per patron, and a sampling
4 shall not exceed ten complimentary two ounce samples per patron per day. A licensed brewer or
5 resident brewer providing complimentary samples shall provide complimentary food items to the
6 patron consuming the complimentary samples; and prior to any sampling, verify, using proper
7 identification, that the patron sampling is twenty-one years of age or over and that the patron is not
8 visibly intoxicated.

9 (c) *Retail sales.* -- Every licensed brewer or resident brewer under this section, shall comply
10 with all the provisions of this article as applicable to nonintoxicating beer retailers when conducting
11 sales of nonintoxicating beer or nonintoxicating craft beer and shall be subject to all applicable
12 requirements and penalties in this article.

13 (d) *Payment of taxes and fees.* -- A licensed brewer or resident brewer under this section,
14 shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in addition to any
15 other taxes and fees required, and meet applicable licensing provisions as required by this chapter
16 and by rule of the commissioner.

17 (e) *Advertising.* -- A licensed brewer or resident brewer under this section, may advertise a
18 particular brand or brands of nonintoxicating beer or nonintoxicating craft beer produced by the
19 licensed brewer or resident brewer, and the price of the nonintoxicating beer or nonintoxicating craft
20 beer subject to state and federal requirements or restrictions. The advertisement may not encourage
21 intemperance.

22 (f) *Growler requirements.* -- A licensed brewer or resident brewer under this section, must

1 fill a growler and patrons are not permitted to access the secure area nor fill a growler. A licensed
2 brewer or resident brewer under this section, must sanitize, fill, securely seal and label any growler
3 prior to its sale. A licensed brewer or resident brewer under this section, may only offer for retail
4 sale up to four growlers of nonintoxicating beer or nonintoxicating craft beer manufactured by the
5 licensed brewer or resident brewer per customer per day for personal consumption off of the licensed
6 premises and not for resale. A licensed brewer or resident brewer under this section, may refill a
7 growler subject to the requirements of this section.

8 (g) *Growler labeling.* -- A licensed brewer or resident brewer under this section selling
9 growlers, shall affix a label on all sold and securely sealed growlers listing the name of the licensee
10 selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer in the growler,
11 the alcohol content by volume of the nonintoxicating beer or nonintoxicating craft beer in the
12 growler and the date the growler was filled or refilled.

13 (h) *Growler sanitation.* -- A licensed brewer or resident brewer authorized under this section,
14 shall clean and sanitize all growlers he or she fills or refills in accordance with all state and county
15 health requirements prior to its sealing, and failure to do so may result in penalties under section
16 twenty-three of this article.

17 (i) *Fee.* -- There is no additional fee for a licensed brewer or resident brewer authorized under
18 this section, to sell growlers.

19 (j) *Limitations on licensees.* -- To be authorized under this section, a licensed brewer or
20 resident brewer may not produce more than twenty-five thousand barrels per calendar year at the
21 brewer's or resident brewer's principal place of business and manufacture located in the State of
22 West Virginia. No more than one brewer or resident brewer license may be issued to a single person

1 or entity and no person may hold both a brewer and a resident brewer license. A licensed brewer or
2 resident brewer under this section, may only conduct tours, give complimentary samples and sell
3 growlers during the hours of operation set forth in subdivision (1), subsection (a), section eighteen
4 of this article. A licensed brewer or resident brewer authorized under this section, shall be subject
5 to the applicable penalties under section twenty-three of this article, for violations of this section.

6 (k) *Rules.* -- The commissioner is authorized to propose rules for legislative approval,
7 pursuant to article three, chapter twenty-nine-a of this code, to implement this section.

8 **§11-16-6b. Brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail**
9 **licensee and Class B retail licensee’s authority to sell growlers.**

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

20 (b) *Sales of nonintoxicating beer.* -- A licensed brewpub, Class A retail dealer, Class B retail
21 dealer, private club, Class A retail licensee or Class B retail licensee who pays the fee in subsection
22 (I) and meets the requirements of this section, may offer nonintoxicating beer or nonintoxicating

1 craft beer for retail sale to patrons from their licensed premises in a growler for personal
2 consumption only off of the licensed premises and not for resale. Prior to the sale, the licensee shall
3 verify, using proper identification that any patron purchasing nonintoxicating beer or nonintoxicating
4 craft beer is twenty-one years of age or over and that the patron is not visibly intoxicated. A licensee
5 authorized under this section, may not sell, give or furnish alcoholic liquors, including wine, for
6 consumption off of its licensed premises, unless it is a private club licensed to sell sealed wine for
7 consumption off of the licensed premises and meets the requirements set out in subdivisions (j) and
8 (l), section three, article eight, chapter sixty of this code, for the sale of wine, not liquor.

9 (c) *Retail sales.* -- Every licensee authorized under this section, shall comply with all the
10 provisions of this article as applicable to nonintoxicating beer retailers when conducting sales of
11 nonintoxicating beer or nonintoxicating craft beer and shall be subject to all applicable requirements
12 and penalties in this article.

13 (d) *Payment of taxes and fees.* -- A licensee authorized under this section, shall pay all taxes
14 and fees required of licensed nonintoxicating beer retailers, in addition to any other taxes and fees
15 required, and meet applicable licensing provisions as required by this chapter and by rule of the
16 commissioner.

17 (e) *Advertising.* -- A licensee authorized under this section, may advertise a particular brand
18 or brands of nonintoxicating beer or nonintoxicating craft beer, and the price of the nonintoxicating
19 beer or nonintoxicating craft beer subject to state and federal requirements or restrictions. The
20 advertisement may not encourage intemperance.

21 (f) *Growler requirements.* -- A licensee authorized under this section, must fill a growler and
22 patrons are not permitted to access the secure area nor fill a growler. A licensee authorized under

1 this section, must sanitize, fill, securely seal and label any growler prior to its sale. A licensee
2 authorized under this section, may only offer for retail sale up to four growlers of nonintoxicating
3 beer or nonintoxicating craft beer per customer per day for personal consumption off of the licensed
4 premises and not for resale. A licensee under this section, may refill a growler subject to the
5 requirements of this section.

6 (g) *Growler labeling.* -- A licensee authorized under this section selling growlers, shall affix
7 a label on all sold and securely sealed growlers listing the name of the licensee selling the growler,
8 the brand of the nonintoxicating beer or nonintoxicating craft beer in the growler, the alcohol content
9 by volume of the nonintoxicating beer or nonintoxicating craft beer in the growler and the date the
10 growler was filled or refilled.

11 (h) *Growler sanitation.* -- A licensee authorized under this section, shall clean and sanitize
12 all growlers it fills or refills in accordance with all state and county health requirements prior to its
13 sealing, and failure to do so may result in penalties under section twenty-three of this article.

14 (I) *Fee.* -- Commencing July 1, 2015 and by every July 1 thereafter, there is an annual \$100
15 non-refundable fee for a licensee, except for a licensed brewpub, to sell growlers as provided by this
16 section. The licensee must be in good standing with the state at the time of paying the fee.

17 (j) *Limitations on licensees.* -- A licensee under this section, may only sell growlers during
18 the hours of operation set forth in subdivision (1), subsection (a), section eighteen of this article.
19 Any licensee licensed under this section must maintain a secure area for the sale of nonintoxicating
20 beer or nonintoxicating craft beer in a growler. The secure area must only be accessible by the
21 licensee. Any licensee licensed under this section shall be subject to the applicable penalties under
22 section twenty-three of this article, for violations of this section.

1 (k) *Non-applicability of certain statutes.* -- Notwithstanding any other provision of this code
2 to the contrary, licensees under this section are permitted to break the seal of the original container
3 for the limited purpose of filling a growler as provided in this section. Any unauthorized sale of
4 nonintoxicating beer or nonintoxicating craft beer, or any consumption not permitted on the
5 licensee's licensed premises is subject to penalties under this article.

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

8 **§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of**
9 **nonintoxicating beer permitted; distributors; brewers; brewpubs.**

10 ~~There is levied and imposed an annual license tax upon all dealers in and of nonintoxicating~~
11 ~~beer as defined by this article, which~~ (a) All retail dealers, distributors, brewpubs, brewers and
12 resident brewers of nonintoxicating beer and of nonintoxicating craft beer shall pay an annual fee
13 to maintain an active license as required by this article. The license period begins on July 1, of each
14 year and ends on June 30 of the following year. ~~and, If the license is granted for a less~~ shorter period,
15 it then the license fee shall be computed semiannually in proportion to the remainder of the fiscal
16 year.

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

18 (1) Retail dealers shall be divided into two classes, Class A and Class B. ~~In the case of~~

19 (A) For a Class A retail dealer, the license fee is \$150 for each place of business; the license
20 fee for social, fraternal or private clubs not operating for profit, and having been in continuous
21 operation for two years or more immediately preceding the date of application, is \$150: *Provided,*
22 That railroads operating in this state may dispense nonintoxicating beer upon payment of an annual

1 license tax of \$10 for each dining, club or buffet car in which the beer is dispensed.

2 Class A licenses issued for railroad dining, club or buffet cars authorize the licensee to sell
3 nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other
4 Class A licenses authorize the licensee to sell nonintoxicating beer at retail for consumption on or
5 off the licensed premises.

6 ~~In the case of~~ (B) For a Class B retailer retail dealer, the license fee, ~~for a Class B license~~
7 authorizing the sale of both chilled and unchilled beer, is \$150 for each place of business. A Class
8 B license authorizes the licensee to sell nonintoxicating beer at retail in bottles, cans or other sealed
9 containers only, and only for consumption off the licensed premises. A Class B retailer may sell to
10 a consumer patron, for personal use and not for resale, quantities of draught beer ~~in quantities of~~
11 ~~one-eighth, one-fourth and~~ in original containers that are no larger in size than one-half barrels ~~in~~
12 ~~the original containers~~ barrel for off-premises consumption.

13 A Class B license may be issued only to the proprietor or owner of a grocery store. For the
14 purpose of this article, the term "grocery store" means ~~and includes~~ any retail establishment
15 commonly known as a grocery store or delicatessen, and caterer or party supply store, where food
16 or food products are sold for consumption off the premises, and ~~means~~ includes a separate and
17 segregated portion of any other retail store which is dedicated solely to the sale of food, food
18 products and supplies for the table for consumption off the premises. ~~The commissioner may~~
19 ~~propose for legislative approval legislative rules pursuant to chapter twenty-nine-a of this code~~
20 ~~necessary to carry this provision into effect.~~ Caterers or party supply stores are required to purchase
21 the appropriate licenses from the Alcohol Beverage Control Administration.

22 (2) ~~In the case of distributors~~ For a distributor, the license fee is \$1,000 for each place of

1 business.

2 (3) ~~In the case of~~ For a brewer or a resident brewer with its principal place of business or
3 manufacture located in this state and who produces:

4 (A) Twelve thousand five hundred barrels (12,500) or less of nonintoxicating beer or
5 nonintoxicating craft beer, the license fee is \$500 for each place of manufacture;

6 (B) Twelve thousand five hundred one barrels (12,501) and up to twenty-five thousand
7 (25,000) barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is \$1,000 for
8 each place of manufacture;

9 (C) More than twenty-five thousand one (25,001) barrels of nonintoxicating beer or
10 nonintoxicating craft beer, the license fee is \$1,500 for each place of manufacture. ~~(4) In the case of~~

11 (4) For a brewer whose principal place of business or manufacture is not located in this state,
12 the license fee is \$1,500 for each place of manufacture. The brewer is exempt from the requirements
13 set out in subsections (c), (d) and (e) of this section.

14 (5) For a brewpub, the license fee is \$1,000 \$500 for each place of manufacture.

15 (c) As part of the application or renewal application and in order to determine a brewer or
16 resident brewer's license fee pursuant to this section, a brewer or resident brewer shall provide the
17 commissioner, on a form provided by the commissioner, with an estimate of the number of
18 nonintoxicating beer or nonintoxicating craft beer barrels and gallons it will produce during the year
19 based upon the production capacity of the brewer's or resident brewer's manufacturing facilities,
20 and the prior year's production and sales volume of nonintoxicating beer or nonintoxicating craft
21 beer.

22 (d) On or before July 15 of each year, every brewer or resident brewer who is granted a

1 license shall file a final report, on a form provided by the commissioner, that is dated as of June 30
2 of each year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in
3 barrels and gallons produced at its principal place of business and manufacture during the prior year.

4 (e) If the actual total production of nonintoxicating beer or nonintoxicating craft beer by the
5 brewer or resident brewer exceeded the brewer's or resident brewer's estimate that was filed with
6 the application or renewal for a brewer's or resident brewer's license for that period, then the brewer
7 or resident brewer shall include a remittance for the balance of the license fee pursuant to this
8 section, that would be required for the final, higher level of production.

9 (f) Any brewer or resident brewer choosing not to file or failing to file the reports required
10 in subsections (c) and (d) of this section, and who is not exempt from the reporting requirements,
11 shall pay a license fee of \$1,500 for each place of manufacture.

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

14 (a) In addition to furnishing the information required by this article, each brewer or
15 distributor applying for a license under this article shall furnish, as prerequisite to a license, a bond
16 with some solvent surety company as surety, to be approved by the commissioner, payable to the
17 State of West Virginia, conditioned for the payment of any and all additional taxes accruing during
18 the period of such license, and conditioned further for the faithful observance of the provisions of
19 this article, the rules, regulations and orders promulgated pursuant thereto and of any other laws of
20 the State of West Virginia generally relating to the sale, transportation, storage and distribution of
21 nonintoxicating beer, which said bonds shall be forfeited to the state upon the revocation of the
22 license of any such brewer or distributor. The amount of such bond, in the case of a resident brewer

1 ~~or brewpub~~, shall be not less than \$5,000, nor more than \$10,000, and in the case of a distributor,
2 not less than \$2,000, nor more than \$5,000 for each place of business licensed and conducted within
3 the state, the amount of such bond, between the minimum and maximum amounts, to be determined
4 in the discretion of the commissioner. There shall be no bond for a brewpub license, as the license
5 privilege itself secures the payment of taxes and is subject to suspension and revocation for failure
6 to pay said taxes. In the case of brewers shipping nonintoxicating beer into the state, any brewer
7 must also furnish a bond in a penalty of not less than \$5,000 nor more than \$25,000 conditioned as
8 hereinabove in this subsection provided and any bond furnished pursuant hereto shall be forfeited
9 to the state in the full amount of said bond upon revocation of license of any such brewer or
10 distributor. Such money received by the state shall be credited to the state fund, general revenue.

11 (b) Each Class A retail dealer, in addition to furnishing the information required by this
12 article, shall furnish as prerequisite to obtaining a license, a bond with some solvent surety company
13 as surety, to be approved by the commissioner, payable to the State of West Virginia, in the amount
14 not less than \$500, nor more than \$1000, within the discretion of the commissioner. All such bonds
15 shall be conditioned for the faithful observance of the provisions of this article, the rules, regulations
16 and orders promulgated pursuant thereto and of any other laws of the State of West Virginia
17 generally relating to the distribution, sale and dispensing of nonintoxicating beer, and shall be
18 forfeited to the state in the full amount of said bond upon the revocation of the license of any such
19 retail dealer. Such money received by the state shall be credited to the state fund, general revenue.

20 (c) Upon the revocation of the license of any Class A retail dealer by the commissioner or by
21 any court of competent jurisdiction, the commissioner or the clerk of said court shall notify the
22 prosecuting attorney of the county wherein such retail dealer's place of business is located, or the

1 prosecuting attorney of the county wherein the licensee resides, of such revocation, and, upon receipt
2 of said notice, it shall be the duty of such prosecuting attorney forthwith to institute appropriate
3 proceedings for the collection of the full amount of said bond. Upon request of such prosecuting
4 attorney, the commissioner shall deliver the bond to him. Willful refusal without just cause therefor
5 by the prosecuting attorney to perform said duty hereby imposed shall subject him to removal from
6 office by the circuit court of the county for which said prosecuting attorney was elected upon proper
7 proceedings and proof in the manner provided by law.