

Senate Bill No. 290

(By Senators Williams, Beach, Blair, Kirkendoll, Stollings, Sypolt, Palumbo and Miller)

[Introduced January 23, 2015; referred to the Committee on Economic Development; and then to the Committee on the Judiciary.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-16-6 and §11-16-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §11-16-8a and §11-16-11b, all relating to regulation of nonintoxicating beer brewers and retailers; authorizing licensed brewers and brewpubs to sell growlers of nonintoxicating beer for off-premises consumption; limiting refunds of license application fees; providing for designated point of communication for inquiries about status of license and registration applications; changing structure and amounts of fees for brewers and brewpubs; requiring brewers to submit annual reports of production; allowing brewers of nonintoxicating craft beer to offer complimentary samples; and removing redundant and outdated language.

Be it enacted by the Legislature of West Virginia:

That §11-16-6 and §11-16-9 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 §11-16-8a and §11-16-11b, all to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

1 **§11-16-6. License in one capacity only; no connection between different licensees; when**
2 **brewer may act as distributor; credit and rebates proscribed; brewpub.**

3 (a) No person shall be licensed in more than one capacity under the terms of this article, and
4 there shall be no connection whatsoever between any retailer, distributor, resident brewer or brewer,
5 and no person shall be interested directly or indirectly through the ownership of corporate stock,
6 membership in a partnership, or in any other way in the business of a retailer, if such person is at the
7 same time interested in the business of a brewer, resident brewer or distributor. A resident brewer
8 may act as distributor in a limited capacity for his or her own product from such resident brewery,
9 place of manufacture or bottling, but a resident brewer is not permitted to act as a distributor as
10 defined in section three of this article: *Provided*, That nothing in this article may prevent a resident
11 brewer from using the services of licensed distributors as specified in this article. A resident brewer
12 or distributor may sell to a consumer for personal use and not for resale, draught beer in quantities
13 of one-eighth, one-fourth and one-half barrels in the original containers. A resident brewer owning
14 a brewpub may sell nonintoxicating beer or nonintoxicating craft beer produced by the brewpub in
15 a sealed growler, cans or bottles for personal consumption off of a licensed premise and not for
16 resale.

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

22 (c) Notwithstanding paragraphs (a) and (b) above, subsections (a) and (b) of this section, a

1 brewpub may offer for retail sale nonintoxicating beer or nonintoxicating craft beer so long as the
 2 sale of the nonintoxicating beer or nonintoxicating craft beer is limited to the brewpub premises
 3 ~~except for up to two growlers per customer~~ and a brewpub or brewer at a production facility located
 4 in this state may sell nonintoxicating craft beer in sealed growlers, of no more than two growlers per
 5 customer per day, for personal consumption off of a licensed premises and not for resale.

6 **§11-16-8a. License fees refundable only under certain conditions; inquiries on status of**
 7 **applications.**

8 (a) All fees submitted with a license application are not refundable to the applicant except
 9 that a person, who submits an incomplete application for a license and elects not to pursue the
 10 application, may withdraw the application within two weeks of submitting the initial application
 11 information and request a refund of the application fee.

12 (b) The commissioner shall establish and maintain a designated means, by telephone,
 13 electronic mail or any other suitable form of communication, for licensees and license applicants to
 14 submit inquiries about the process for, and the status of, an application for license, franchise
 15 agreement approval, or registration of a label, brand or line extension, to be answered within one
 16 business day of the submission of the inquiry.

17 **§11-16-9. Amount of license fee; Class A and Class B retail dealers; purchase and sale of**
 18 **nonintoxicating beer permitted; distributors; brewers; brewpubs; production**
 19 **amount; estimates.**

20 ~~There is levied and imposed an annual license tax upon all dealers in and of nonintoxicating~~
 21 ~~beer as defined by this article, which~~ (a) All retailers, distributors and brewers of nonintoxicating
 22 beer shall pay an annual fee to maintain an active license as required by this article. The license

1 period begins on July 1, of each year and ends on June 30 of the following year, and, if granted for
2 a less period, it shall be computed semiannually in proportion to the remainder of the fiscal year as
3 follows:

4 (1) Retail dealers shall be divided into two classes, Class A and Class B. ~~In the case of a~~
5 ~~Class A retail dealer the~~

6 (A) The license fee for a Class A retail dealer is \$150 for each place of business; the license
7 fee for social, fraternal or private clubs not operating for profit, and having been in continuous
8 operation for two years or more immediately preceding the date of application, is \$150: *Provided,*
9 That railroads operating in this state may dispense nonintoxicating beer upon payment of an annual
10 license tax of \$10 for each dining, club or buffet car in which the beer is dispensed. Class A licenses
11 issued for railroad dining, club or buffet cars authorize the licensee to sell nonintoxicating beer at
12 retail for consumption only on the licensed premises where sold. All other Class A licenses
13 authorize the licensee to sell nonintoxicating beer at retail for consumption on or off the licensed
14 premises.

15 ~~In the case of a Class B retailer, the~~ (B) The fee for a Class B license authorizing the sale of
16 both chilled and unchilled beer is \$150 for each place of business. A Class B license authorizes the
17 licensee to sell nonintoxicating beer at retail in bottles, cans or other sealed containers only, and only
18 for consumption off the licensed premises. A Class B retailer may sell to a consumer, for personal
19 use and not for resale, draught beer in quantities of one-eighth, one-fourth and one-half barrels in the
20 original containers. A Class B license may be issued only to the proprietor or owner of a grocery
21 store. For the purpose of this article the term "grocery store" means and includes any retail
22 establishment commonly known as a grocery store or delicatessen and caterer or party supply store,

1 where food or food products are sold for consumption off the premises, and means a separate and
2 segregated portion of any other retail store which is dedicated solely to the sale of food, food
3 products and supplies for the table for consumption off the premises. ~~The commissioner may~~
4 ~~propose for legislative approval legislative rules pursuant to chapter twenty-nine-a of this code~~
5 ~~necessary to carry this provision into effect.~~ Caterers or party supply stores are required to purchase
6 the appropriate licenses from the alcohol beverage control administration.

7 (2) ~~In the case of~~ For distributors, the license fee is \$1,000 for each place of business.

8 (3) ~~In the case of a brewer with its principal place of business located in this state, the license~~
9 ~~fee is \$1,500 for each place of manufacture.~~ For brewers who produce twelve thousand five hundred
10 barrels or less of nonintoxicating beer for sale in this state, the license fee is \$750 for each place of
11 manufacture. For brewers who produce more than twelve thousand five hundred barrels for sale in
12 this state, the license fee is \$1,500 for each place of manufacture.

13 (4) ~~In the case of~~ For a brewpub, the license fee is ~~\$1,000~~ \$400 for each place of
14 manufacture.

15 (b) As part of the application for a brewer's license, the brewer shall provide an estimate,
16 based upon the production capacity of the brewer's manufacturing facilities and the prior sales
17 volume, of the anticipate volume of nonintoxicating beer to be imported into, or offered, for sale in
18 this state during the license period. The brewer's estimate serves as the basis for levying the license
19 fee to be paid by the brewer. Every brewer who is granted a brewer's license shall at the conclusion
20 of the license period, in a form and within a time prescribed by the Tax Commissioner, file a final
21 report stating the actual volume of nonintoxicating beer produced for sale in this state, or imported
22 for sale into this state, during the license period and, where total production has exceeded the

1 brewer's estimate filed with the application for brewer's license for that period, shall include a
2 remittance for the balance of the license fee that would be required for the final, higher level of
3 production.

4 **§11-16-11b. Authorization for brewer to provide complimentary samples for consumption on**
5 **premises; maximum.**

6 Notwithstanding any provision of this code to the contrary, a licensed brewer at a
7 manufacturing facility for the production of nonintoxicating craft beer may offer complimentary
8 samples of any brand, flavor, type, label or line extension of nonintoxicating craft beer produced at
9 that facility for consumption on the premises of the facility. An individual sample may not exceed
10 two and one-half liquid ounces in volume and no person may receive more than a total of sixteen
11 ounces of samples in one day.

NOTE: The purpose of this bill is to promote the growth of craft beer production and facilities in West Virginia by restructuring license fees for brewers in proportion to production volumes, allowing brewers of craft beer to offer complimentary samples at their production facilities and sell refillable growlers for offsite consumption, and to provide an easy means of inquiry into the process and status of application for license and registrations.

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

§11-16-8a and §11-16-1b are new; therefore, strike-throughs and underscoring have been omitted.