

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 273

(By Senators Cole (Mr. President) and Kessler,
By Request of the Executive)

[Originating in the Committee on
the Judiciary;
reported February 23, 2015.]

A BILL to amend and reenact §11-16-3, §11-16-6, §11-16-9
and §11-16-12 of the Code of West Virginia, 1931, as
amended; and to amend said code by adding thereto
two new sections, designated §11-16-6a and §11-16-
6b, all relating to brewer, resident brewer and
brewpub licensing and operations; clarifying

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definitions; providing legislative findings; authorizing licensed brewers and resident brewers to offer complimentary nonintoxicating beer and nonintoxicating craft beer samples; authorizing licensed brewers and resident brewers to sell growlers with limitations; authorizing licensed brewpubs, Class A retail dealers, Class B retail dealers, private clubs, Class A retail licensees and Class B retail licensees to sell growlers with limitations; clarifying licensing and operational requirements for brewers, resident brewers and brewpubs; changing the license fee schedule for certain brewers and resident brewers; decreasing the license fee for brewpubs; requiring brewers and resident brewers to submit annual reports of production; and removing brewpub bonding requirements.

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Be it enacted by the Legislature of West Virginia:

That §11-16-3, §11-16-6, §11-16-9 and §11-16-12 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 §11-16-6a and §11-16-6b, all to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

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

3 (1) "Brand" means a nonintoxicating beer product
4 manufactured, brewed, mixed, concocted, blended, bottled or
5 otherwise produced, or imported or transhipped by a brewer
6 or manufacturer, the labels of which have been registered and
7 approved by the commissioner that is being offered for sale
8 or sold in West Virginia by a distributor who has been

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1 appointed in a valid franchise agreement or a valid
2 amendment thereto.

3 (2) "Brewer" or "manufacturer" means any person
4 manufacturing, otherwise producing or importing or
5 transshipping nonintoxicating beer or nonintoxicating craft
6 beer for sale at wholesale to any licensed distributor. Brewer
7 or manufacturer may be used interchangeably throughout this
8 article. A brewer may obtain only one brewer's license for its
9 nonintoxicating beer or nonintoxicating craft beer.

10 (3) "Brewpub" means a place of manufacture of
11 nonintoxicating beer or nonintoxicating craft beer owned by
12 a resident brewer, subject to federal and state regulations and
13 guidelines, a portion of which premises are designated for
14 retail sales of nonintoxicating beer or nonintoxicating craft
15 beer by the resident brewer owning the brewpub.

16 (4) "Class A retail license" means a retail license

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1 permitting the retail sale of liquor at a freestanding liquor
2 retail outlet licensed pursuant to chapter sixty of this code.

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

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

8 ~~(6)~~ (7) "Distributor" means and includes any person
9 jobbing or distributing nonintoxicating beer or
10 nonintoxicating craft beer to retailers at wholesale and whose
11 warehouse and chief place of business shall be within this
12 state. For purposes of a distributor only, the term "person"
13 means and includes an individual, firm, trust, partnership,
14 limited partnership, limited liability company, association or
15 corporation. Any trust licensed as a distributor or any trust
16 that is an owner of a distributor licensee, and the trustee or

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1 other persons in active control of the activities of the trust
2 relating to the distributor license, is liable for acts of the trust
3 or its beneficiaries relating to the distributor license that are
4 unlawful acts or violations of article eleven of this chapter
5 notwithstanding the liability of trustees in article ten, chapter
6 forty-four-d of this code.

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

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

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1 ~~(8)~~ (9) "Franchise distributor network" means the
2 distributors who have entered into a binding written franchise
3 agreement, identical as to terms and conditions, to distribute
4 nonintoxicating beer products, brands and line extensions in
5 an assigned territory for a brewer. A brewer may only have
6 one franchise distributor network: *Provided*, That a brewer
7 that has acquired the manufacturing, bottling or other
8 production rights for the sale of nonintoxicating beer at
9 wholesale from a selling brewer as specified in subdivision
10 (2), subsection (a), section twenty-one of this article shall
11 continue to maintain and be bound by the selling brewer's
12 separate franchise distributor's network for any of its existing
13 brands, line extensions and new brands.

14 ~~(9)~~ (10) "Freestanding liquor retail outlet" means a
15 retail outlet that sells only liquor, beer, nonintoxicating beer
16 and other alcohol-related products, as defined pursuant to

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1 section four, article three-a, chapter sixty of this code.

2 (10) (11) "Growler" means a container or jug that is
3 made of glass, ceramic, ~~or metal container or jug~~ or other
4 material approved by the commissioner, that may be up to
5 one hundred twenty-eight ounces or a gallon in size and must
6 be capable of being securely sealed. The growler is utilized
7 by a ~~brewpub~~ an authorized licensee for purposes of off-
8 premise sales only of nonintoxicating beer or nonintoxicating
9 craft beer for personal consumption not on a licensed premise
10 and not for resale. Notwithstanding any other provision of
11 this code to the contrary, a securely sealed growler is not an
12 open container under federal, state and local law. A growler
13 with a broken seal is an open container under federal, state
14 and local law unless it is located in a region of the motor
15 vehicle physically separated from the passenger compartment.
16 The secure sealing of a growler requires the use of a tamper-

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1 resistant seal, security tape or other material, as approved by
2 the commissioner, placed on or over the growler's opening,
3 which seal, security tape or other material is clearly marked
4 with the date of the secure sealing.

5 (11)(12) "Line extension" means any nonintoxicating
6 beer product that is an extension of brand or family of brands
7 that is labeled, branded, advertised, marketed, promoted or
8 offered for sale with the intent or purpose of being
9 manufactured, imported, associated, contracted, affiliated or
10 otherwise related to a brewer's existing brand through the use
11 of a brewer, its subsidiaries, parent entities, contracted
12 entities, affiliated entities or other related entities. In
13 determining whether a nonintoxicating beer product is a line
14 extension, the commissioner may consider, but is not limited
15 to, the following factors: name or partial name; trade name or
16 partial trade name; logos; copyrights; trademarks or trade

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1 design; product codes; advertising promotion or pricing.

2 ~~(12)~~ (13) "Nonintoxicating beer" means all natural
3 cereal malt beverages or products of the brewing industry
4 commonly referred to as beer, lager beer, ale and all other
5 mixtures and preparations produced by the brewing industry,
6 including malt coolers and nonintoxicating craft beers with no
7 caffeine infusion or any additives masking or altering the
8 alcohol effect containing at least one half of one percent
9 alcohol by volume, but not more than nine and six-tenths of
10 alcohol by weight, or twelve percent by volume, whichever
11 is greater. The word "liquor" as used in chapter sixty of this
12 code does not include or embrace nonintoxicating beer nor
13 any of the beverages, products, mixtures or preparations
14 included within this definition.

15 ~~(13)~~ (14) "Nonintoxicating beer sampling event"
16 means an event approved by the commissioner for a Class A

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1 retail Licensee to hold a nonintoxicating beer sampling
2 authorized pursuant to section eleven-a of this article.

3 ~~(14)~~ (15) "Nonintoxicating beer sampling day" means
4 any days and hours of the week where Class A retail licensees
5 may sell nonintoxicating beer pursuant to section eleven-a
6 and subdivision (1), subsection (a), section eighteen of this
7 article, and is approved, in writing, by the commissioner to
8 conduct a nonintoxicating beer sampling event.

9 ~~(15)~~ (16) "Nonintoxicating craft beer" means any
10 beverage obtained by the natural fermentation of barley, malt,
11 hops or any other similar product or substitute and containing
12 not less than one half of one percent by volume and not more
13 than twelve percent alcohol by volume or nine and six-tenths
14 percent alcohol by weight with no caffeine infusion or any
15 additives masking or altering the alcohol effect.

16 ~~(16)~~ (17) "Original container" means the container

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1 used by ~~the~~ a resident brewer or brewer at the place of
2 manufacturing, bottling or otherwise producing
3 nonintoxicating beer or nonintoxicating craft beer for sale at
4 wholesale.

5 ~~(17)~~ (18) "Person" means and includes an individual,
6 firm, partnership, limited partnership, limited liability
7 company, association or corporation.

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

10 ~~(18)~~ (20) "Resident brewer" means any brewer or
11 manufacturer of nonintoxicating beer or nonintoxicating craft
12 beer whose principal place of business and manufacture is
13 located in the State of West Virginia and which does not brew
14 or manufacture more than twenty-five thousand barrels of
15 nonintoxicating beer or nonintoxicating craft beer annually,
16 and does not self-distribute more than ten thousand barrels

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1 thereof in the State of West Virginia annually.

2 ~~(19)~~ (21) "Retailer" means any person selling, serving,
3 or otherwise dispensing nonintoxicating beer and all products
4 regulated by this article, including, but not limited to, malt
5 coolers at his or her established and licensed place of
6 business.

7 ~~(20)~~ (22) "Tax Commissioner" means the Tax
8 Commissioner of the State of West Virginia or the
9 commissioner's designee.

10 **§11-16-6. License in one capacity only; no connection**
11 **between different licensees; when brewer**
12 **may act as distributor; credit and rebates**
13 **proscribed; brewer, resident brewer and**
14 **brewpub requirements.**

15 (a) No person shall be licensed in more than one
16 capacity under the terms of this article, and there shall be no

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1 connection whatsoever between any retailer, distributor,
2 resident brewer or brewer, and no person shall be interested
3 directly or indirectly through the ownership of corporate
4 stock, membership in a partnership, or in any other way in the
5 business of a retailer, if such person is at the same time
6 interested in the business of a brewer, resident brewer or
7 distributor. A resident brewer may act as distributor in a
8 limited capacity for his or her own product from such resident
9 brewery, place of manufacture or bottling, but a resident
10 brewer is not permitted to act as a distributor as defined in
11 section three of this article: *Provided*, That nothing in this
12 article may prevent a resident brewer from using the services
13 of licensed distributors as specified in this article. A resident
14 brewer or distributor may sell to a ~~consumer~~ patron for
15 personal use and not for resale, quantities of draught beer in
16 quantities of one-eighth, one-fourth and in original

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1 containers that are no larger in size than one-half barrels in
2 the original containers barrel for off-premises consumption.
3 A resident brewer ~~owning~~ who also has a brewpub license
4 may sell nonintoxicating beer or nonintoxicating craft beer
5 produced by the ~~brewpub~~ resident brewer in a sealed growler
6 cans, ~~or bottles~~ or sealed growlers, pursuant to section six-b
7 of this article, for personal consumption off of a the
8 brewpub's licensed premise premises and not for resale.

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

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1 in accordance with this article.

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

10 **§11-16-6a. Brewer and resident brewer license to**
11 **manufacture, sell and provide**
12 **complimentary samples.**

13 (a) *Legislative findings.* -- The Legislature hereby
14 finds that it is in the public interest to regulate, control and
15 support the brewing, manufacturing, distribution, sale,
16 consumption, transportation and storage of nonintoxicating

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1 beer and nonintoxicating craft beer, and its industry in this
2 state in order to protect the public health, welfare and safety
3 of the citizens of this state, and promote hospitality and
4 tourism. Therefore, this section authorizes a licensed brewer
5 or resident brewer with its principal place of business and
6 manufacture located in this state to have certain abilities in
7 order to promote the sale of nonintoxicating beer and
8 nonintoxicating craft beer manufactured in this state for the
9 benefit of the citizens of this state, the state's growing
10 brewing industry and the state's hospitality and tourism
11 industry, all of which are vital components for the state's
12 economy.

13 (b) *Sales of nonintoxicating beer.* -- A licensed brewer
14 or resident brewer with its principal place of business and
15 manufacture located in the State of West Virginia may offer
16 only nonintoxicating beer or nonintoxicating craft beer

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1 manufactured by the licensed brewer or resident brewer for
2 retail sale to customers from the brewer's or resident brewer's
3 licensed premises for consumption off the licensed premises
4 only in the form of kegs, bottles, cans or growlers for
5 personal consumption and not for resale. A licensed brewer
6 or resident brewer may not sell, give or furnish
7 nonintoxicating beer for consumption on the premises of the
8 principal place of business and manufacture located in the
9 State of West Virginia, except for the limited purpose of
10 complimentary samples as permitted in subsection (c) of this
11 section.

12 (c) *Complimentary samples.* -- A licensed brewer or
13 resident brewer with its principal place of business and
14 manufacture located in the State of West Virginia may only
15 offer complimentary samples of nonintoxicating beer or
16 nonintoxicating craft beer brewed at the brewer's or resident

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

12 (d) *Retail sales.* -- Every licensed brewer or resident
13 brewer under this section, shall comply with all the provisions
14 of this article as applicable to nonintoxicating beer retailers
15 when conducting sales of nonintoxicating beer or
16 nonintoxicating craft beer and shall be subject to all

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1 applicable requirements and penalties in this article.

2 (e) *Payment of taxes and fees.* -- A licensed brewer or
3 resident brewer under this section, shall pay all taxes and fees
4 required of licensed nonintoxicating beer retailers, in addition
5 to any other taxes and fees required, and meet applicable
6 licensing provisions as required by this chapter and by rule of
7 the commissioner.

8 (f) *Advertising.* -- A licensed brewer or resident
9 brewer under this section, may advertise a particular brand or
10 brands of nonintoxicating beer or nonintoxicating craft beer
11 produced by the licensed brewer or resident brewer, and the
12 price of the nonintoxicating beer or nonintoxicating craft beer
13 subject to state and federal requirements or restrictions. The
14 advertisement may not encourage intemperance.

15 (g) *Growler requirements.* -- A licensed brewer or
16 resident brewer under this section, must fill a growler and

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

12 (h) *Growler labeling.* -- A licensed brewer or resident
13 brewer under this section selling growlers, shall affix a label
14 on all sold and securely sealed growlers listing the name of
15 the licensee selling the growler, the brand of the
16 nonintoxicating beer or nonintoxicating craft beer in the

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1 growler, the alcohol content by volume of the nonintoxicating
2 beer or nonintoxicating craft beer in the growler and the date
3 the growler was filled or refilled.

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

10 (j) *Fee.* -- There is no additional fee for a licensed
11 brewer or resident brewer authorized under this section, to
12 sell growlers.

13 (k) *Limitations on licensees.* -- To be authorized under
14 this section, a licensed brewer or resident brewer may not
15 produce more than twenty-five thousand barrels per calendar
16 year at the brewer's or resident brewer's principal place of

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1 business and manufacture located in the State of West
2 Virginia. No more than one brewer or resident brewer license
3 may be issued to a single person or entity and no person may
4 hold both a brewer and a resident brewer license. A licensed
5 brewer or resident brewer under this section, may only
6 conduct tours, give complimentary samples and sell growlers
7 during the hours of operation set forth in subdivision (1),
8 subsection (a), section eighteen of this article. A licensed
9 brewer or resident brewer authorized under this section, shall
10 be subject to the applicable penalties under section twenty-
11 three of this article, for violations of this section.

12 (1) *Rules.* -- The commissioner, in consultation with
13 the Bureau for Public Health concerning sanitation, is
14 authorized to propose rules for legislative approval, pursuant
15 to article three, chapter twenty-nine-a of this code, to
16 implement this section.

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1 **§11-16-6b. Brewpub, Class A retail dealer, Class B retail**
2 **dealer, private club, Class A retail licensee**
3 **and Class B retail licensee’s authority to**
4 **sell growlers.**

5 (a) *Legislative findings.* -- The Legislature hereby
6 finds that it is in the public interest to regulate, control and
7 support the brewing, manufacturing, distribution, sale,
8 consumption, transportation and storage of nonintoxicating
9 beer and nonintoxicating craft beer, and its industry in this
10 state in order to protect the public health, welfare and safety
11 of the citizens of this state, and promote hospitality and
12 tourism. Therefore, this section authorizes a licensed
13 brewpub, Class A retail dealer, Class B retail dealer, private
14 club, Class A retail licensee or Class B retail licensee to have
15 certain abilities in order to promote the sale of
16 nonintoxicating beer and nonintoxicating craft beer

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1 manufactured in this state for the benefit of the citizens of this
2 state, the state's growing brewing industry and the state's
3 hospitality and tourism industry, all of which are vital
4 components for the state's economy.

5 (b) *Sales of nonintoxicating beer.* -- A licensed
6 brewpub, Class A retail dealer, Class B retail dealer, private
7 club, Class A retail licensee or Class B retail licensee who
8 pays the fee in subsection (i) of this section and meets the
9 requirements of this section, may offer nonintoxicating beer
10 or nonintoxicating craft beer for retail sale to patrons from
11 their licensed premises in a growler for personal consumption
12 only off of the licensed premises and not for resale. Prior to
13 the sale, the licensee shall verify, using proper identification
14 that any patron purchasing nonintoxicating beer or
15 nonintoxicating craft beer is twenty-one years of age or over
16 and that the patron is not visibly intoxicated. A licensee

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1 authorized under this section, may not sell, give or furnish
2 alcoholic liquors, including wine, for consumption off of its
3 licensed premises, unless it is a private club licensed to sell
4 sealed wine for consumption off of the licensed premises and
5 meets the requirements set out in subdivisions (j) and (l),
6 section three, article eight, chapter sixty of this code, for the
7 sale of wine, not liquor.

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

14 (d) *Payment of taxes and fees.* -- A licensee authorized
15 under this section, shall pay all taxes and fees required of
16 licensed nonintoxicating beer retailers, in addition to any

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1 other taxes and fees required, and meet applicable licensing
2 provisions as required by this chapter and by rule of the
3 commissioner.

4 (e) *Advertising.* -- A licensee authorized under this
5 section, may advertise a particular brand or brands of
6 nonintoxicating beer or nonintoxicating craft beer, and the
7 price of the nonintoxicating beer or nonintoxicating craft beer
8 subject to state and federal requirements or restrictions. The
9 advertisement may not encourage intemperance.

10 (f) *Growler requirements.* -- A licensee authorized
11 under this section, must fill a growler and patrons are not
12 permitted to access the secure area nor fill a growler. A
13 licensee authorized under this section, must sanitize, fill,
14 securely seal and label any growler prior to its sale. A
15 licensee authorized under this section, may only offer for
16 retail sale up to four growlers of nonintoxicating beer or

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1 nonintoxicating craft beer per customer per day for personal
2 consumption off of the licensed premises and not for resale.
3 A licensee under this section, may refill a growler subject to
4 the requirements of this section.

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

13 (h) *Growler sanitation.* -- A licensee authorized under
14 this section, shall clean and sanitize all growlers it fills or
15 refills in accordance with all state and county health
16 requirements prior to its sealing, and failure to do so may

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1 result in penalties under section twenty-three of this article.

2 (i) *Fee.* -- Commencing July 1, 2015, and by every
3 July 1 thereafter, there is an annual \$100 nonrefundable fee
4 for a licensee, except for a licensed brewpub, to sell growlers
5 as provided by this section. The licensee must be in good
6 standing with the state at the time of paying the fee.

7 (j) *Limitations on licensees.* -- A licensee under this
8 section, may only sell growlers during the hours of operation
9 set forth in subdivision (1), subsection (a), section eighteen of
10 this article. Any licensee licensed under this section must
11 maintain a secure area for the sale of nonintoxicating beer or
12 nonintoxicating craft beer in a growler. The secure area must
13 only be accessible by the licensee. Any licensee licensed
14 under this section shall be subject to the applicable penalties
15 under section twenty-three of this article, for violations of this
16 section.

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

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

13 **§11-16-9. Amount of license tax; Class A and Class B**
14 **retail dealers; purchase and sale of nonintoxicating**
15 **beer permitted; distributors; brewers; brewpubs.**
16 ~~There is levied and imposed an annual license tax~~

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1 upon all dealers in and of nonintoxicating beer as defined by
2 ~~this article, which~~ (a) All retail dealers, distributors,
3 brewpubs, brewers and resident brewers of nonintoxicating
4 beer and of nonintoxicating craft beer shall pay an annual fee
5 to maintain an active license as required by this article. The
6 license period begins on July 1, of each year and ends on June
7 30 of the following year. ~~and;~~ If the license is granted for a
8 ~~less shorter period, it then the license fee shall be computed~~
9 semiannually in proportion to the remainder of the fiscal year.

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

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

13 (A) For a Class A retail dealer, the license fee is \$150
14 for each place of business; the license fee for social, fraternal
15 or private clubs not operating for profit, and having been in
16 continuous operation for two years or more immediately

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1 preceding the date of application, is \$150: *Provided*, That
2 railroads operating in this state may dispense nonintoxicating
3 beer upon payment of an annual license tax of \$10 for each
4 dining, club or buffet car in which the beer is dispensed.

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

11 ~~In the case of (B) For a Class B retailer~~ retail dealer,
12 the license fee, ~~for a Class B license~~ authorizing the sale of
13 both chilled and unchilled beer, is \$150 for each place of
14 business. A Class B license authorizes the licensee to sell
15 nonintoxicating beer at retail in bottles, cans or other sealed
16 containers only, and only for consumption off the licensed

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1 premises. A Class B retailer may sell to a ~~consumer~~ patron,
2 for personal use and not for resale, quantities of draught beer
3 ~~in quantities of one-eighth, one-fourth and in original~~
4 containers that are no larger in size than one-half barrels in
5 ~~the original containers~~ barrel for off-premises consumption.

6 A Class B license may be issued only to the proprietor
7 or owner of a grocery store. For the purpose of this article,
8 the term "grocery store" means ~~and includes~~ any retail
9 establishment commonly known as a grocery store or
10 delicatessen, and caterer or party supply store, where food or
11 food products are sold for consumption off the premises, and
12 ~~means~~ includes a separate and segregated portion of any other
13 retail store which is dedicated solely to the sale of food, food
14 products and supplies for the table for consumption off the
15 premises. ~~The commissioner may propose for legislative~~
16 ~~approval legislative rules pursuant to chapter twenty-nine-a~~

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1 ~~of this code necessary to carry this provision into effect.~~
2 Caterers or party supply stores are required to purchase the
3 appropriate licenses from the Alcohol Beverage Control
4 Administration.

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

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

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

13 (B) Twelve thousand five hundred one barrels
14 (12,501) and up to twenty-five thousand (25,000) barrels of
15 nonintoxicating beer or nonintoxicating craft beer, the license
16 fee is \$1,000 for each place of manufacture;

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

5 (4) For a brewer whose principal place of business or
6 manufacture is not located in this state, the license fee is
7 \$1,500 for each place of manufacture. The brewer is exempt
8 from the requirements set out in subsections (c), (d) and (e)
9 of this section.

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

12 (c) As part of the application or renewal application
13 and in order to determine a brewer or resident brewer's
14 license fee pursuant to this section, a brewer or resident
15 brewer shall provide the commissioner, on a form provided
16 by the commissioner, with an estimate of the number of

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1 nonintoxicating beer or nonintoxicating craft beer barrels and
2 gallons it will produce during the year based upon the
3 production capacity of the brewer's or resident brewer's
4 manufacturing facilities, and the prior year's production and
5 sales volume of nonintoxicating beer or nonintoxicating craft
6 beer.

7 (d) On or before July 15 of each year, every brewer or
8 resident brewer who is granted a license shall file a final
9 report, on a form provided by the commissioner, that is dated
10 as of June 30 of each year, stating the actual volume of
11 nonintoxicating beer or nonintoxicating craft beer in barrels
12 and gallons produced at its principal place of business and
13 manufacture during the prior year.

14 (e) If the actual total production of nonintoxicating
15 beer or nonintoxicating craft beer by the brewer or resident
16 brewer exceeded the brewer's or resident brewer's estimate

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1 that was filed with the application or renewal for a brewer's
2 or resident brewer's license for that period, then the brewer
3 or resident brewer shall include a remittance for the balance
4 of the license fee pursuant to this section, that would be
5 required for the final, higher level of production.

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

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

15 (a) In addition to furnishing the information required
16 by this article, each brewer or distributor applying for a

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1 license under this article shall furnish, as prerequisite to a
2 license, a bond with some solvent surety company as surety,
3 to be approved by the commissioner, payable to the State of
4 West Virginia, conditioned for the payment of any and all
5 additional taxes accruing during the period of such license,
6 and conditioned further for the faithful observance of the
7 provisions of this article, the rules, regulations and orders
8 promulgated pursuant thereto and of any other laws of the
9 State of West Virginia generally relating to the sale,
10 transportation, storage and distribution of nonintoxicating
11 beer, which said bonds shall be forfeited to the state upon the
12 revocation of the license of any such brewer or distributor.
13 The amount of such bond, in the case of a resident brewer ~~or~~
14 ~~brewpub~~, shall be not less than \$5,000, nor more than
15 \$10,000, and in the case of a distributor, not less than \$2,000,
16 nor more than \$5,000 for each place of business licensed and

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

15 (b) Each Class A retail dealer, in addition to
16 furnishing the information required by this article, shall

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1 furnish as prerequisite to obtaining a license, a bond with
2 some solvent surety company as surety, to be approved by the
3 commissioner, payable to the State of West Virginia, in the
4 amount not less than \$500, nor more than \$1000, within the
5 discretion of the commissioner. All such bonds shall be
6 conditioned for the faithful observance of the provisions of
7 this article, the rules, regulations and orders promulgated
8 pursuant thereto and of any other laws of the State of West
9 Virginia generally relating to the distribution, sale and
10 dispensing of nonintoxicating beer, and shall be forfeited to
11 the state in the full amount of said bond upon the revocation
12 of the license of any such retail dealer. Such money received
13 by the state shall be credited to the state fund, general
14 revenue.

15 (c) Upon the revocation of the license of any Class A
16 retail dealer by the commissioner or by any court of competent

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1 jurisdiction, the commissioner or the clerk of said court shall
2 notify the prosecuting attorney of the county wherein such
3 retail dealer's place of business is located, or the prosecuting
4 attorney of the county wherein the licensee resides, of such
5 revocation, and, upon receipt of said notice, it shall be the duty
6 of such prosecuting attorney forthwith to institute appropriate
7 proceedings for the collection of the full amount of said bond.
8 Upon request of such prosecuting attorney, the commissioner
9 shall deliver the bond to him. Willful refusal without just
10 cause therefor by the prosecuting attorney to perform said duty
11 hereby imposed shall subject him to removal from office by
12 the circuit court of the county for which said prosecuting
13 attorney was elected upon proper proceedings and proof in the
14 manner provided by law.