

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3136

By Delegates Westfall, Honaker, Householder,
Espinosa, Hardy, Riley, Clark, Hite, Martin, Storch and
Young

[Introduced January 30, 2023; Referred to the
Committee on Government Organization then the
Judiciary]

1 A BILL to amend and reenact §11-16-6a of the Code of West Virginia, 1931, as amended, relating
2 to brewer and resident brewer licenses; providing that a licensed brewer or resident brewer
3 may not produce more than 50,000 barrels per calendar year at a brewer or resident
4 brewer's principle place of business and manufacture; clarifying that a licensed brewer or
5 resident brewer may have multiple locations; and providing that licensed brewers and
6 resident brewers may enter into contract brewing services agreements with another
7 licensed brewer or resident brewer for purposes of sharing equipment or facilities as part of
8 the manufacture of nonintoxicating beer or nonintoxicating craft beer.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. NONINTOXICATING BEER.

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

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

11 (b) Sales of nonintoxicating beer. — A licensed brewer or resident brewer with its principal
12 place of business and manufacture located in the State of West Virginia may offer only
13 nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident
14 brewer for retail sale to customers from the brewer's or resident brewer's licensed premises for

15 consumption off of the licensed premises only in the form of kegs, bottles, cans, or growlers for
16 personal consumption and not for resale. A licensed brewer or resident brewer may not sell, give
17 or furnish nonintoxicating beer for consumption on the premises of the principal place of business
18 and manufacture located in the State of West Virginia, except for the limited purpose of
19 complimentary samples as permitted in subsection (c) of this section.

20 (c) Complimentary samples. — A licensed brewer or resident brewer with its principal
21 place of business and manufacture located in the State of West Virginia may only offer
22 complimentary samples of nonintoxicating beer or nonintoxicating craft beer brewed at the
23 brewer's or resident brewer's principal place of business and manufacture located in the State of
24 West Virginia. The complimentary samples may be no greater than two ounces per sample per
25 patron, and a sampling shall not exceed 10 complimentary two-ounce samples per patron per day.
26 A licensed brewer or resident brewer providing complimentary samples shall provide
27 complimentary food items to the patron consuming the complimentary samples; and prior to any
28 sampling, verify, using proper identification, that the patron sampling is 21 years of age or over and
29 that the patron is not visibly intoxicated.

30 (d) Retail sales. — Every licensed brewer or resident brewer under this section shall
31 comply with all the provisions of this article as applicable to nonintoxicating beer retailers when
32 conducting sales of nonintoxicating beer or nonintoxicating craft beer and shall be subject to all
33 applicable requirements and penalties in this article.

34 (e) Payment of taxes and fees. — A licensed brewer or resident brewer under this section
35 shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in addition to any
36 other taxes and fees required, and meet applicable licensing provisions as required by this chapter
37 and by rule of the commissioner.

38 (f) Advertising. — A licensed brewer or resident brewer under this section may advertise a
39 particular brand or brands of nonintoxicating beer or nonintoxicating craft beer produced by the
40 licensed brewer or resident brewer and the price of the nonintoxicating beer or nonintoxicating

41 craft beer subject to state and federal requirements or restrictions. The advertisement may not
42 encourage intemperance.

43 (g) Growler requirements. — A licensed brewer or resident brewer under this section must
44 fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensed
45 brewer or resident brewer under this section must sanitize, fill, securely seal, and label any growler
46 prior to its sale. A licensed brewer or resident brewer under this section may only offer for retail
47 sale growlers no larger than 128 fluid ounces of nonintoxicating beer or nonintoxicating craft beer
48 manufactured by the licensed brewer or resident brewer for personal consumption off of the
49 licensed premises and not for resale. A licensed brewer or resident brewer under this section may
50 refill a growler subject to the requirements of this section. A licensed brewer or resident brewer
51 shall visually inspect any growler before filling or refilling it. A licensed brewer or resident brewer
52 may not fill or refill any growler that appears to be cracked, broken, unsafe or otherwise unfit to
53 serve as a sealed beverage container.

54 (h) Growler labeling. — A licensed brewer or resident brewer under this section selling
55 growlers shall affix a conspicuous label on all sold and securely sealed growlers listing the name of
56 the licensee selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer
57 in the growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating craft
58 beer in the growler and the date the growler was filled or refilled, and, further, all labeling on the
59 growler shall be consistent with all federal labeling and warning requirements.

60 (i) Growler sanitation. — A licensed brewer or resident brewer authorized under this
61 section shall clean and sanitize all growlers he or she fills or refills in accordance with all state and
62 county health requirements prior to its sealing. In addition, the licensed brewer or resident brewer
63 shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe
64 lines, barrel tubes and any other related equipment used to fill or refill growlers. Failure to comply
65 with this subsection may result in penalties under §11-16-23 of this code.

66 (j) Fee. — There is no additional fee for a licensed brewer or resident brewer authorized

67 under this section to sell growlers.

68 (k) Limitations on licensees. — To be authorized under this section, a licensed brewer or
69 resident brewer may not produce more than ~~25,000 barrels~~ 50,000 barrels per calendar year at the
70 brewer's or resident brewer's principal place of business and manufacture located in the State of
71 West Virginia. ~~No more than one brewer or resident brewer license may be issued to a single
72 person or entity and no person may hold both a brewer and a resident brewer license~~ The
73 commissioner may issue more than one brewer or resident brewer license to a single person or
74 entity for multiple places of business and manufacture located in the State of West Virginia so long
75 as the licensed brewer or resident brewer does not produce more than 50,000 barrels in the
76 aggregate per calendar year. A licensed brewer or resident brewer under this section may only
77 conduct tours, give complimentary samples and sell growlers during the hours of operation set
78 forth in §11-16-18(a)(1) of this code. A licensed brewer or resident brewer authorized under this
79 section shall be subject to the applicable penalties under §11-16-23 of this code for violations of
80 this section.

81 (l) (1) Contract Brewing Services Agreements. — A licensed brewer or resident brewer may
82 enter into contract brewing services agreements with another licensed brewer or resident brewer
83 with its principal place of business and manufacture located in the State of West Virginia for
84 purposes of sharing brewing equipment or facilities as part of the manufacture of nonintoxicating
85 beer or nonintoxicating craft beer. Any such contract brewing services agreement shall be
86 provided to the West Virginia Alcohol Beverage and Control Administration and set forth the
87 following terms and conditions:

88 (A) The licensed brewer or resident brewer serving as the brewer of record and retaining
89 ownership, rights, title, and interest in the nonintoxicating beer or nonintoxicating craft beer recipe
90 and brand;

91 (B) The licensed brewer or resident brewer who will be responsible for executing any brew
92 of nonintoxicating beer or nonintoxicating craft beer;

93 (C) The location of the facilities to be utilized for the manufacture of the nonintoxicating
94 beer or nonintoxicating craft beer;

95 (D) Specifications regarding the packaging of all nonintoxicating beer or nonintoxicating
96 craft beer manufactured under the contract brewing services agreement; and

97 (E) The manner of payment of any and all federal and state excise taxes associated with
98 the manufactured nonintoxicating beer or nonintoxicating craft beer.

99 (2) The licensed brewer or resident brewer serving as the brewer of record is responsible
100 for the transportation of the finished and packaged product to their licensed facility, where it must
101 come to rest and be tax determined. Any nonintoxicating beer or nonintoxicating craft beer
102 manufactured pursuant to a contract brewing services agreement shall be credited to the specified
103 brewer of record for purposes of the barrel limitations set forth in §11-16-6a(k) of this code, and not
104 the licensed brewer or resident brewer responsible for executing any brew on behalf of the brewer
105 of record. Subject to state and federal requirements or restrictions, the commissioner may allow
106 for a licensed brewer or resident brewer with its principal place of business and manufacture
107 located in the State of West Virginia to enter into contract brewing services agreements for the
108 purposes of executing any brew of nonintoxicating beer or nonintoxicating craft beer on behalf of
109 any person or entity that is currently licensed and in good standing in its domicile state as a brewer,
110 resident brewer, other nonintoxicating beer or nonintoxicating craft beer manufacturer.

111 ~~(f)~~ (m) Rules. — The commissioner, in consultation with the Bureau for Public Health
112 concerning sanitation, is authorized to propose rules for legislative approval, pursuant to §29A-3-1
113 *et seq.* of this code, to implement this section.

NOTE: The purpose of this bill is to clarify that licensed brewers and licensed resident brewers may have more than one location so long as the brewer or resident brewer does not produce more than 50,000 barrels of nonintoxicating beer or nonintoxicating craft beer in the aggregate for a calendar year, and to allow for brewers to enter into contract brewing services agreements for purposes of sharing equipment and facilities as part of the manufacturing process.

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