

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 94

By Senator Rucker

[Introduced January 11, 2023; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §11-16-6d and §11-16-6f of the Code of West Virginia, 1931, as
2 amended, all relating to removing limitations on nonintoxicating craft beer delivery
3 licenses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. NONINTOXICATING BEER.

**§11-16-6d. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed
Class A retail dealer or a third party; requirements; limitations; third party license
fee; retail transportation permit; and requirements.**

1 (a) A Class A retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating
2 craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license
3 permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a
4 sealed original container of bottles or cans, and sealed growlers, when separately licensed for
5 growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is
6 permitted for off-premises consumption when completed by the licensee or the licensee's
7 employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by
8 telephone, a mobile ordering application, or a web-based software program, as authorized by the
9 licensee's license. There is no additional fee for licensed Class A retail dealers to obtain a
10 nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery
11 process shall meet the requirements of this section. The order, sale, and delivery process is
12 subject to the penalties of this article.

13 (b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or
14 distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license for
15 the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or
16 nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers,
17 from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or
18 nonintoxicating craft beer is permitted for off-premises consumption when the Class A retail dealer

19 sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through
20 telephone orders, a mobile ordering application, or a web-based software program. The annual
21 nonintoxicating beer or nonintoxicating craft beer delivery license fee is \$200 per third party entity,
22 with no limit on the number of drivers and vehicles. The delivery license fee under this subsection
23 may not be prorated nor refunded.

24 (c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall
25 comply with licensure requirements in §11-16-8 of this code, and shall require any information set
26 forth in this article and as reasonably required by the commissioner.

27 (d) *Sale Requirements.* —

28 (1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the
29 purchase of prepared food, or a meal and the completion of the sale may be accomplished by the
30 delivery of the prepared food or meal and nonintoxicating beer or nonintoxicating craft beer by the
31 Class A retail dealer or third party licensee;

32 (2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21
33 years of age or older, ~~shall~~ may not be visibly or noticeably intoxicated at the time of delivery, and
34 shall meet the requirements set forth in this article for the sale of nonintoxicating beer or
35 nonintoxicating craft beer;

36 (3) "Prepared food or a meal" shall, for purposes of this article, mean food that has been
37 cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched,
38 sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged
39 food from the manufacturer;

40 ~~(4) An order, sale, or delivery consisting of multiple meals shall not amount to any~~
41 ~~combination of bottles, cans, or sealed growlers in excess of 384 fluid ounces of nonintoxicating~~
42 ~~beer or nonintoxicating craft beer; and~~

43 ~~(5)~~ (4) A third party delivery licensee may not have a pecuniary interest in a Class A retail
44 dealer, as set forth in this article, therefore a third party delivery licensee may only charge a

45 convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third
46 party licensee may not collect a percentage of the delivery order for the delivery of alcohol, but
47 may continue to collect a percentage of the delivery order directly related to the prepared food or a
48 meal. The convenience fee charged by the third party delivery licensee to the person purchasing
49 may not be greater than \$20 per delivery order where nonintoxicating beer or nonintoxicating craft
50 beer are ordered by the purchasing person. For any third party licensee also licensed for wine
51 growler delivery as set forth in §60-8-6c of the code, or craft cocktail growler delivery as set forth in
52 §60-7-8f of the code, the total convenience fee of any order, sale, and delivery of a sealed growler,
53 wine growler, or craft cocktail growler ~~shall~~ may not exceed \$5.

54 (e) *Delivery Requirements.* —

55 (1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating
56 craft beer shall be 21 years of age or older. The licensed Class A retail dealer and the third party
57 delivery licensee shall file each delivery person's name, driver's license, and vehicle information
58 with the commissioner;

59 (2) A Class A retail dealer or third party delivery licensee shall train delivery persons on
60 verifying legal identification and in identifying the signs of intoxication and shall submit certification
61 of the training to the commissioner;

62 (3) The Class A retail dealer or third party delivery licensee shall hold a retail transportation
63 permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft beer
64 pursuant to §11-16-6d(g) of this code: *Provided*, That a delivery driver may retain an electronic
65 copy of his or her permit;

66 (4) A Class A retail dealer or third party delivery licensee may only deliver prepared food or
67 a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders in the county or
68 contiguous counties where the Class A retail dealer is located;

69 (5) A Class A retail dealer or third party delivery licensee may only deliver prepared food or
70 a meal, and sealed nonintoxicating beer or nonintoxicating craft beer to addresses located in West

71 Virginia. A Class A retail dealer or third party delivery licensee shall pay and account for all sales
72 and municipal taxes;

73 (6) A Class A retail dealer or third party delivery licensee may not deliver prepared food or
74 a meal, and nonintoxicating beer or nonintoxicating craft beer to any other Class A licensee;

75 (7) A Class A retail dealer or third party delivery licensee may only deliver prepared food or
76 a meal, and sealed nonintoxicating beer or nonintoxicating craft beer for personal use, and not for
77 resale; and

78 (8) A Class A retail dealer or third party delivery licensee shall may not deliver and leave
79 prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer at any
80 address without verifying a person's age and identification as required by this section.

81 (f) Telephone, mobile ordering application, or web-based software requirements. —

82 (1) The delivery person may only permit the person who placed the order through a
83 telephone, mobile ordering application, or web-based software to accept the prepared food or a
84 meal, and nonintoxicating beer or nonintoxicating craft beer delivery which is subject to age
85 verification upon delivery with the delivery person's visual review and age verification;

86 (2) Any mobile ordering application or web-based software used shall create a stored
87 record and image of the purchasing person's legal identification and details of the sale, accessible
88 by the delivery person for verification, and shall include the delivery driver's name and vehicle
89 information and delivery shall be subject to legal identification verification;

90 (3) Any telephone ordering system shall maintain a log or record of the purchasing
91 person's legal identification and details of the sale, accessible by the delivery person for
92 verification, and shall include the delivery driver's name and vehicle information and delivery shall
93 be subject to legal identification verification;

94 (4) All records are subject to inspection by the commissioner. A Class A retail dealer or
95 third party delivery licensee shall retain all records for three years, and may not unreasonably
96 withhold the records from the commissioner's inspection; and

97 (5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer ~~must~~ shall be
98 issued a retail transportation permit per §11-16-6d(g) of this code.

99 (g) *Retail Transportation Permit.* —

100 (1) A Class A retail dealer or third party delivery licensee shall obtain and maintain a retail
101 transportation permit for the delivery of prepared food and nonintoxicating beer or nonintoxicating
102 craft beer.

103 (2) A Class A retail dealer or a third party licensee shall apply for a permit and provide
104 vehicle and driver information, as required by the commissioner. Upon any change in vehicles or
105 drivers, the Class A retail dealer or third party delivery licensee shall update the vehicle and driver
106 information with the commissioner within 10 days of the change.

107 (h) *Enforcement.* —

108 (1) A Class A retail dealer or third party delivery licensee are responsible for any violations
109 committed by their employees or independent contractors under this article, and more than one
110 violation may be issued for a single violation involving multiple Class A retail dealers or licensees,
111 employees, or independent contractors.

112 (2) A license or permit granted by this section is subject to the penalties of probation,
113 monetary fines, suspension, and revocation, as set forth in this article, for violations committed by
114 the Class A retail dealer or third party delivery licensee, its employees, or independent contractors.

115 (3) It is a violation for any licensee, its employees, or independent contractors to break the
116 seal of a growler subject to the maximum penalties available in this article.

117 (4) For purposes of criminal enforcement of the provisions of this article, persons ordering,
118 purchasing, or accepting delivery of orders are considered to be purchasers.

**§11-16-6f. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed
Class B retail dealer or a third party; requirements; limitations; third party license
fee; retail transportation permit; and requirements.**

119 (a) A Class B retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating

120 craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license
121 permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a
122 sealed original container of bottles or cans, and sealed growlers, when separately licensed for
123 growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is
124 permitted for off-premises consumption when completed by the licensee or the licensee's
125 employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by a
126 telephone, a mobile ordering application, or web-based software program, as authorized by the
127 licensee's license. There is no additional fee for licensed Class B retail dealers to obtain a
128 nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery
129 process shall meet the requirements of this section. The order, sale, and delivery process is
130 subject to the penalties of this article.

131 (b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or
132 distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license for
133 the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or
134 nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers,
135 from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or
136 nonintoxicating craft beer is permitted for off-premises consumption when the Class B retail dealer
137 sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through a
138 telephone order, a mobile ordering application, or web-based software program. The
139 nonintoxicating beer or nonintoxicating craft beer delivery annual license fee is \$200 per third party
140 licensee, with no limit on the number of drivers and vehicles. The delivery license fee under this
141 subsection may not be prorated nor refunded.

142 (c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall
143 comply with licensure requirements in §11-16-8 of this code and shall require any information set
144 forth in this article and as reasonably required by the commissioner.

145 (d) *Sale Requirements.* —

146 (1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the
147 purchase of food and the completion of the sale may be accomplished by the delivery of food and
148 nonintoxicating beer or nonintoxicating craft beer by the licensee or third party licensee;

149 (2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21
150 years of age or older, ~~shall~~ may not be visibly or noticeably intoxicated at the time of delivery, and
151 meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating
152 craft beer;

153 (3) Food, for purposes of this section, means food that has been cooked, microwaved, or
154 that is pre-packaged food from the manufacturer; and

155 ~~(4) An order, sale, or delivery consisting of food and any combination of sealed~~
156 ~~nonintoxicating beer or nonintoxicating craft beer bottles, cans, or growlers shall not be in excess~~
157 ~~of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and~~

158 ~~(5)~~ (4) A third party delivery licensee shall may not have a pecuniary interest in a Class B
159 retail dealer, as set forth in this article. A third party delivery licensee may only charge a
160 convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third
161 party licensee may not collect a percentage of the delivery order for the delivery of nonintoxicating
162 beer or nonintoxicating craft beer, but may continue to collect a percentage of the delivery order
163 directly related to food. The convenience fee charged by the third party delivery licensee to the
164 purchasing person may not be greater than \$20 per delivery order. For any third party licensee
165 also licensed for wine delivery as set forth in §60-8-6f of this code the total convenience fee for any
166 order, sale, and delivery of sealed wine may not exceed \$20.

167 (e) *Delivery Requirements.* —

168 (1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating
169 craft beer shall be 21 years of age or older. A Class B retail dealer and a third party licensee shall
170 file each delivery person's name, driver's license, and vehicle information with the commissioner;

171 (2) A Class B retail dealer and a third party licensee shall train delivery persons on verifying

172 legal identification and in identifying the signs of intoxication and submit the certification of the
173 training to the commissioner;

174 (3) The Class B retail dealer or third party delivery licensee shall hold a retail transportation
175 permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft beer
176 pursuant to §11-16-6f(g) of this code: *Provided*, That a delivery driver may retain an electronic
177 copy of his or her permit as proof of the licensure;

178 (4) A Class B retail dealer and a third party licensee may deliver food and sealed
179 nonintoxicating beer or nonintoxicating craft beer orders in the county where the Class B retail
180 dealer is located;

181 (5) A Class B retail dealer and a third party licensee may only deliver food and sealed
182 nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class B
183 retail dealer and a third party licensee shall pay and account for all sales and municipal taxes;

184 (6) A Class B retail dealer and a third party licensee may not deliver food and
185 nonintoxicating beer or nonintoxicating craft beer to any other Class B licensee;

186 (7) Deliveries of food and sealed nonintoxicating beer or nonintoxicating craft beer are only
187 for personal use, and not for resale; and

188 (8) A Class B retail dealer and a third party licensee shall not deliver and leave food and
189 sealed nonintoxicating beer or nonintoxicating craft beer at any address without verifying a
190 person's age and identification as required by this section.

191 (f) Telephone, mobile ordering application, or web-based software requirements. —

192 (1) The delivery person may only permit the person who placed the order through a
193 telephone, mobile ordering application, or web-based software to accept the food and
194 nonintoxicating beer or nonintoxicating craft beer delivery. The delivery is subject to age
195 verification upon delivery with the delivery person's visual review and age verification;

196 (2) Any mobile ordering application or web-based software used must create a stored
197 record and image of the purchasing person's legal identification and details of the sale, accessible

198 by the delivery person for verification, and shall include the delivery driver's name and vehicle
199 information and delivery shall be subject to legal identification verification;

200 (3) Any telephone ordering system shall maintain a log or record of the purchasing
201 person's legal identification and details of the sale, accessible by the delivery person for
202 verification, and shall include the delivery driver's name and vehicle information and delivery shall
203 be subject to legal identification verification;

204 (4) All records are subject to inspection by the commissioner. A Class B retail dealer and a
205 third party licensee shall retain all records for three years, and may not unreasonably withhold the
206 records from the commissioner's inspection; and

207 (5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer shall be
208 issued a retail transportation permit in accordance with §11-16-6f(g) of this code.

209 (g) *Retail Transportation Permit.* —

210 (1) A Class B retail dealer and a third party licensee shall obtain and maintain a retail
211 transportation permit for the delivery of food and nonintoxicating beer or nonintoxicating craft beer.

212 (2) A Class B retail dealer or a third party licensee shall apply for a permit and provide
213 vehicle and driver information, required by the commissioner. Upon any change in vehicles or
214 drivers, Class B retail dealer and a third party licensee shall update the vehicle and driver
215 information with the commissioner within 10 days of the change.

216 (h) *Enforcement.* —

217 (1) The Class B retail dealer and a third party licensee are responsible for any violations
218 committed by their employees or independent contractors under this article, and more than one
219 violation may be issued for a single violation involving multiple Class B retail dealers or third party
220 licensees, employees, or independent contractors.

221 (2) A license or permit granted by this section is subject to the penalties of probation,
222 monetary fines, suspension, and revocation, as set forth in this article, for violations committed by
223 the Class B retail dealer or third party licensee, their employees, or independent contractors.

224 (3) It is a violation for any Class B retail dealer or third party licensee, their employees, or
225 independent contractors to break the seal of a growler subject to the maximum penalties available
226 in this article.

227 (4) For purposes of criminal enforcement of the provisions of this article, persons ordering,
228 purchasing, or accepting delivery of orders are considered to be purchasers.

NOTE: The purpose of this bill is to remove limitations on nonintoxicating craft beer delivery licenses.

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