

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 649

(By Senators Kessler (Mr. President),
Browning, Edgell, Klempa and Beach)

[Originating in the Committee on the Judiciary;
reported February 24, 2012.]

A BILL to amend and reenact §11-16-3 and §11-16-8 of the Code of West Virginia, 1931, as amended, all relating to the Nonintoxicating Beer Act; adding a limited liability company to the definition of “person” under the act; allowing a trust to be an applicant for a distributor license; and requiring certain disclosures by applicants for distributor licenses that are trusts or limited liability companies.

Be it enacted by the Legislature of West Virginia:

That §11-16-3 and §11-16-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

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

3 (1) “Brewer” or “manufacturer” means any person, firm,
4 association, partnership or corporation manufacturing,
5 brewing, mixing, concocting, blending, bottling or otherwise
6 producing or importing or transshipping from a foreign
7 country nonintoxicating beer for sale at wholesale to any
8 licensed distributor.

9 (2) “Brewpub” means a place of manufacture of nonin-
10 toxicating beer owned by a resident brewer, subject to
11 federal regulations and guidelines, a portion of which
12 premises are designated for retail sales.

13 (3) “Commissioner” means the West Virginia Alcohol
14 Beverage Control Commissioner.

15 (4) “Distributor” means and includes any person jobbing
16 or distributing nonintoxicating beer to retailers at wholesale
17 and whose warehouse and chief place of business shall be
18 within this state. For the purpose of a distributor only, the
19 term “person” means and includes an individual, firm, trust,
20 partnership, limited partnership, limited liability company,

21 association or corporation. Any trust licensed as a distribu-
22 tor, and the trustee or other persons in active control of the
23 activities of the trust relating to the distributor license, is
24 liable for acts of the trust or its beneficiaries relating to the
25 distributor license that are unlawful acts or violations of
26 article eleven of this chapter notwithstanding the liability of
27 trustees in article ten, chapter forty-four-d of this code.

28 (5) “Nonintoxicating beer” means all cereal malt bever-
29 ages or products of the brewing industry commonly referred
30 to as beer, lager beer, ale and all other mixtures and prepa-
31 rations produced by the brewing industry, including malt
32 coolers and nonintoxicating craft beers containing at least
33 one half of one percent alcohol by volume, but not more than
34 nine and six-tenths of alcohol by weight, or twelve percent
35 by volume, whichever is greater. ~~all of which are hereby~~
36 ~~declared to be nonintoxicating and~~ The word “liquor” as
37 used in chapter sixty of this code ~~shall not be construed to~~
38 does not include or embrace nonintoxicating beer nor any of
39 the beverages, products, mixtures or preparations included
40 within this definition.

41 (6) “Nonintoxicating craft beer” means any beverage
42 obtained by the fermentation of barley, malt, hops or any

43 other similar product or substitute and containing not less
44 than one half of one percent by volume and not more than
45 twelve percent alcohol by volume or nine and six-tenths
46 percent alcohol by weight.

47 (7) "Original container" means the container used by the
48 brewer at the place of manufacturing, bottling or otherwise
49 producing nonintoxicating beer for sale at wholesale.

50 (8) "Person" means and includes an individual, firm,
51 partnership, limited partnership, limited liability company,
52 association or corporation.

53 (9) "Resident brewer" means any person, firm, associa-
54 tion, partnership or corporation whose principal place of
55 business is within the state.

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

61 (11) "Tax Commissioner" means the Tax Commissioner
62 of the State of West Virginia or the commissioner's designee.

**§11-16-8. Form of application for license; fee and bond; refusal of
license.**

1 (a) A license may be issued by the commissioner to any
2 person who submits an application, ~~therefore,~~ accompanied
3 by a license fee and, where required, a bond, ~~stating and~~
4 states under oath:

5 (1) The name and residence of the applicant, the duration
6 of such residency, that the applicant has been a resident of
7 the state for a period of two years ~~next~~ preceding the date of
8 the application and that the applicant is twenty-one years of
9 age. If the applicant is a firm, association, partnership,
10 limited partnership, limited liability company or corpora-
11 tion, the application shall include the residence of the
12 members or officers for a period of two years ~~next~~ preceding
13 the date of such application. ~~Provided, That if any~~ If a
14 person, firm, partnership, limited partnership, ~~association or~~
15 ~~corporation~~ limited liability company, association, corpora-
16 tion or trust applies for a license as a distributor, such
17 person, or in the case of a firm, partnership, limited partner-
18 ship, ~~or association, the members or officers thereof~~ limited
19 liability company, association or trust, the members, officers,
20 trustees or other persons in active control of the activities of
21 the trust relating to the license, shall state under oath that
22 each has been a bona fide resident of the state for four years

23 preceding the date of such application. If the applicant is a
24 trust, the trustees or other persons in active control of the
25 activities of the trust relating to the license, shall provide a
26 certification of trust as described in section one-thousand-
27 thirteen, article ten, chapter forty-four-d of this code. This
28 certification of trust shall include the excerpts described in
29 subsection (e), section one-thousand-thirteen, article ten,
30 chapter forty-four-d of this code and shall state, under oath,
31 the names and addresses of the beneficiaries of the trust and
32 that the trustee and beneficiaries are twenty-one years of age
33 or older. If a beneficiary is not twenty-one years of age, the
34 certification of trust must state that such beneficiary's
35 interest in the trust is represented by a trustee, parent or
36 legal guardian who is twenty-one years old and who will
37 direct all actions on behalf of such beneficiary related to the
38 trust with respect to the distributor until the beneficiary is
39 twenty-one.

40 (2) The place of birth of applicant, that he or she is a
41 citizen of the United States and of good moral character and,
42 if a naturalized citizen, when and where naturalized. ~~and, if~~
43 If the applicant is a corporation organized or authorized to
44 do business under the laws of the state, the application must

45 state when and where incorporated, ~~with~~ the name and
46 address of each officer; that each officer is a citizen of the
47 United States and a person of good moral character. ~~and if a~~
48 ~~firm, association, partnership or limited partnership~~; If the
49 applicant is a firm, association, limited liability company,
50 partnership, limited partnership or trust, the application
51 shall provide the place of birth of each member of the firm,
52 association, ~~partnership or limited partnership~~ and that each
53 ~~member~~ limited liability company, partnership or limited
54 partnership and of the trustees, beneficiaries or other
55 persons in active control of the activities of the trust relating
56 to the license and that each member or trustee, beneficiary
57 or other persons in active control of the activities of the trust
58 relating to the license is a citizen of the United States and if
59 a naturalized citizen, when and where naturalized, each of
60 whom must qualify and sign the application. ~~Provided, That~~
61 The requirements as to residence ~~shall do~~ not apply to the
62 officers of a corporation ~~which shall apply~~ applying for a
63 retailer's license but the officers, agent or employee who
64 ~~shall manage and be in charge~~ manages and is in charge of
65 the licensed premises shall possess all of the qualifications

66 required of an individual applicant for a retailer's license
67 including the requirement as to residence;

68 (3) The particular place for which the license is desired
69 and a detailed description thereof;

70 (4) The name of the owner of the building and, if the
71 owner is not the applicant, that ~~such~~ the applicant is the
72 actual and bona fide lessee of the premises;

73 (5) That the place or building in which is proposed to do
74 business conforms to all applicable laws of health, fire and
75 zoning regulations ~~applicable thereto~~, and is a safe and
76 proper place or building ~~and is~~ not within three hundred feet
77 of ~~any~~ a school or church measured from front door to front
78 door, along the street or streets. ~~Provided, That~~ This require-
79 ment ~~shall~~ does not apply to a Class B license or to ~~any~~ a
80 place ~~now~~ occupied by a beer licensee so long as it is contin-
81 uously so occupied. ~~Provided, however, That~~ The prohibition
82 against locating ~~any such~~ a proposed business in a place or
83 building within three hundred feet of ~~any~~ a school ~~shall~~ does
84 not apply to ~~any~~ a college or university that has notified the
85 commissioner, in writing, that it has no objection to the
86 location of ~~any such~~ a proposed business in a place or

87 building within three hundred feet of such college or univer-
88 sity;

89 (6) That the applicant is not incarcerated and has not
90 during the five years ~~immediately~~ preceding the date of said
91 application been convicted of a felony;

92 (7) That the applicant is the only person in any manner
93 pecuniarily interested in the business so asked to be licensed
94 and that no other person ~~shall be~~ is in any manner pecuni-
95 arily interested ~~therein~~ during the continuance of the license;
96 and

97 (8) That the applicant has not during five years ~~next~~
98 ~~immediately~~ preceding the date of ~~said~~ the application had
99 a nonintoxicating beer license revoked.

100 (b) The provisions and requirements of subsection (a) of
101 this section are mandatory prerequisites for the issuance,
102 and in the event any applicant fails to qualify under the
103 same, the license shall be refused. In addition to the informa-
104 tion furnished in any application, the commissioner may
105 make such additional and independent investigation of each
106 applicant and of the place to be occupied as ~~deemed~~ neces-
107 sary or advisable and, for this reason, ~~each and~~ all applica-
108 tions, with license fee and bond, must be filed thirty days

109 prior to the beginning of any fiscal year. ~~and if~~ If the appli-
110 cation is for an unexpired portion of ~~any a~~ fiscal year, the
111 issuance of license may be withheld for such reasonable time
112 as necessary for investigation.

113 (c) The commissioner may refuse a license to any appli-
114 cant under the provisions of this article if the commissioner
115 ~~shall be~~ is of the opinion:

116 (1) That the applicant is not a suitable person to be
117 licensed;

118 (2) That the place to be occupied by the applicant is not
119 a suitable place or is within three hundred feet of any school
120 or church measured from front door to front door along the
121 street or streets. ~~Provided, That~~ This requirement ~~shall~~ does
122 not apply to a Class B licensee or to ~~any a~~ place now occu-
123 pied by a beer licensee so long as it is continuously so
124 occupied. ~~Provided, however, That~~ The prohibition against
125 locating any such place ~~to be occupied by an applicant~~
126 within three hundred feet of ~~any a~~ school ~~shall~~ does not
127 apply to ~~any a~~ college or university that has notified the
128 commissioner, in writing, that it has no objection to the
129 location of any such place within three hundred feet; ~~of such~~
130 ~~college or university;~~ or

131 (3) That the license should not be issued for reason of
132 conduct declared to be unlawful by this article.

(NOTE: The purpose of this bill is to authorize trusts to be applicants for a nonintoxicating beer distributor license and to add limited liability companies to the definition of person in the Nonintoxicating Beer Act.

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