

1 **H. B. 2448**

2  
3 (By Delegates Hunt, Lawrence and Pethtel)

4 [Introduced February 14, 2013; referred to the  
5 Committee on the Judiciary then Finance.]

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10 A BILL to amend and reenact §11-16-3 and §11-16-8 of the Code of  
11 West Virginia, 1931, as amended, all relating to the  
12 Nonintoxicating Beer Act; adding a limited liability  
13 company to the definition of person under the act and  
14 allowing a trust to be an applicant for a distributor  
15 license.

16 *Be it enacted by the Legislature of West Virginia:*

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

19 **ARTICLE 16. NONINTOXICATING BEER.**

20 **§11-16-3. Definitions.**

21 For the purpose of this article, except where the context  
22 clearly requires differently:

23 (1) "Brewer" or "manufacturer" means any person, firm,

1 association, partnership or corporation manufacturing, brewing,  
2 mixing, concocting, blending, bottling or otherwise producing or  
3 importing or transshipping from a foreign country nonintoxicating  
4 beer for sale at wholesale to any licensed distributor.

5 (2) "Brewpub" means a place of manufacture of nonintoxicating  
6 beer owned by a resident brewer, subject to federal regulations and  
7 guidelines, a portion of which premises are designated for retail  
8 sales.

9 (3) "Class A retail license" means a retail license permitting  
10 the retail sale of liquor at a freestanding liquor retail outlet  
11 licensed pursuant to chapter sixty of this code.

12 (4) "Commissioner" means the West Virginia Alcohol Beverage  
13 Control Commissioner.

14 (5) "Distributor" means and includes any person jobbing or  
15 distributing nonintoxicating beer to retailers at wholesale and  
16 whose warehouse and chief place of business shall be within this  
17 state. For the purpose of a distributor only, the term "person"  
18 means and includes an individual, firm, trust, partnership, limited  
19 partnership, limited liability company, association or corporation.  
20 Any trust licensed as a distributor, and the trustee or other  
21 persons in active control of the activities of the trust relating  
22 to the distributor license, is liable for acts of the trust or its  
23 beneficiaries relating to the distributor license that are unlawful  
24 acts or violations of article eleven of this chapter

1 notwithstanding the liability of trustees in article ten, chapter  
2 forty-four-d of this code.

3 (6) "Freestanding liquor retail outlet" means a retail outlet  
4 that sells only liquor, beer, nonintoxicating beer and other  
5 alcohol-related products, as defined pursuant to section four,  
6 article three-a, chapter sixty of this code.

7 (7) "Nonintoxicating beer" means all cereal malt beverages or  
8 products of the brewing industry commonly referred to as beer,  
9 lager beer, ale and all other mixtures and preparations produced by  
10 the brewing industry, including malt coolers and nonintoxicating  
11 craft beers containing at least one half of one percent alcohol by  
12 volume, but not more than nine and six-tenths of alcohol by weight,  
13 or twelve percent by volume, whichever is greater. ~~all of which are~~  
14 ~~hereby declared to be nonintoxicating and the~~ The word "liquor" as  
15 used in chapter sixty of this code ~~shall not be construed to~~ does  
16 not include or embrace nonintoxicating beer nor any of the  
17 beverages, products, mixtures or preparations included within this  
18 definition.

19 (8) "Nonintoxicating beer sampling event" means an event  
20 approved by the commissioner for a Class A retail Licensee to hold  
21 a nonintoxicating beer sampling authorized pursuant to section  
22 eleven-a of this article.

23 (9) "Nonintoxicating beer sampling day" means any days and  
24 hours of the week where Class A retail licensees may sell

1 nonintoxicating beer pursuant to sub-section (a)(1), section  
2 eighteen of this article, and is approved, in writing, by the  
3 commissioner to conduct a nonintoxicating beer sampling event.

4 (10) "Nonintoxicating craft beer" means any beverage obtained  
5 by the fermentation of barley, malt, hops or any other similar  
6 product or substitute and containing not less than one half of one  
7 percent by volume and not more than twelve percent alcohol by  
8 volume or nine and six-tenths percent alcohol by weight.

9 (11) "Original container" means the container used by the  
10 brewer at the place of manufacturing, bottling or otherwise  
11 producing nonintoxicating beer for sale at wholesale.

12 (12) "Person" means and includes an individual, firm,  
13 partnership, limited partnership, limited liability company,  
14 association or corporation.

15 (13) "Resident brewer" means any person, firm, association,  
16 partnership, or corporation whose principal place of business is  
17 within the state.

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

23 (15) "Tax Commissioner" means the Tax Commissioner of the  
24 State of West Virginia or the commissioner's designee.

1 **§11-16-8. Form of application for license; fee and bond; refusal**  
 2 **of license.**

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

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

1 control of the activities of the trust relating to the license,  
2 shall provide a certification of trust as described in section  
3 one-thousand-thirteen, article ten, chapter forty-four-d of this  
4 code. This certification of trust shall include the excerpts  
5 described in subsection (e), section one-thousand-thirteen, article  
6 ten, chapter forty-four-d of this code and shall state, under oath,  
7 the names and addresses of the beneficiaries of the trust and that  
8 the trustee and beneficiaries are twenty-one years of age or older.  
9 If a beneficiary is not twenty-one years of age, the certification  
10 of trust must state that the beneficiary's interest in the trust is  
11 represented by a trustee, parent or legal guardian who is  
12 twenty-one years old and who will direct all actions on behalf of  
13 the beneficiary related to the trust with respect to the  
14 distributor until the beneficiary is twenty-one.

15 (2) The place of birth of applicant, that he or she is a  
16 citizen of the United States and of good moral character and, if a  
17 naturalized citizen, when and where naturalized. ~~and, if~~ If the  
18 applicant is a corporation organized or authorized to do business  
19 under the laws of the state, the application must state when and  
20 where incorporated, ~~with~~ the name and address of each officer; that  
21 each officer is a citizen of the United States and a person of good  
22 moral character. ~~and if a firm, association, partnership or limited~~  
23 ~~partnership,~~ If the applicant is a firm, association, limited  
24 liability company, partnership, limited partnership or trust, the

1 application shall provide the place of birth of each member of the  
2 firm, association, ~~partnership or limited partnership~~ and that each  
3 ~~member~~ limited liability company, partnership or limited  
4 partnership and of the trustees, beneficiaries or other persons in  
5 active control of the activities of the trust relating to the  
6 license and that each member or trustee, beneficiary or other  
7 persons in active control of the activities of the trust relating  
8 to the license is a citizen of the United States and if a  
9 naturalized citizen, when and where naturalized, each of whom must  
10 qualify and sign the application. ~~Provided, That~~ The requirements  
11 as to residence ~~shall~~ do not apply to the officers of a corporation  
12 ~~which shall apply~~ applying for a retailer's license but the  
13 officers, agent or employee who ~~shall manage and be in charge~~  
14 manage and are in charge of the licensed premises shall possess all  
15 of the qualifications required of an individual applicant for a  
16 retailer's license including the requirement as to residence;

17 (3) The particular place for which the license is desired and  
18 a detailed description; ~~thereof;~~

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

22 (5) That the place or building in which is proposed to do  
23 business conforms to all applicable laws of health, fire and zoning  
24 regulations ~~applicable thereto,~~ and is a safe and proper place or

1 building ~~and is~~ not within three hundred feet of ~~any~~ a school or  
2 church measured from front door to front door, along the street or  
3 streets. ~~Provided, That~~ This requirement ~~shall~~ does not apply to  
4 a Class B license or to ~~any~~ a place now occupied by a beer licensee  
5 so long as it is continuously so occupied. ~~Provided, however, That~~  
6 The prohibition against locating ~~any such~~ a proposed business in a  
7 place or building within three hundred feet of ~~any~~ a school ~~shall~~  
8 does not apply to ~~any~~ a college or university that has notified the  
9 commissioner, in writing, that it has no objection to the location  
10 of ~~any such~~ a proposed business in a place or building within three  
11 hundred feet of ~~such~~ the college or university;

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

15 (7) That the applicant is the only person in any manner  
16 pecuniarily interested in the business so asked to be licensed and  
17 that no other person ~~shall be~~ is in any manner pecuniarily  
18 interested ~~therein~~ during the continuance of the license; and

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

22 (b) The provisions and requirements of subsection (a) of this  
23 section are mandatory prerequisites for the issuance, and ~~in the~~  
24 ~~event if~~ if any applicant fails to qualify ~~under the same,~~ the license

1 shall be refused. In addition to the information furnished in any  
2 application, the commissioner may make such additional and  
3 independent investigation of each applicant and of the place to be  
4 occupied as ~~deemed~~ necessary or advisable and, for this reason,  
5 ~~each and~~ all applications, with license fee and bond, must be filed  
6 thirty days prior to the beginning of any fiscal year. ~~and if~~ If  
7 the application is for an unexpired portion of ~~any~~ a fiscal year,  
8 the issuance of license may be withheld for such reasonable time as  
9 necessary for investigation.

10 (c) The commissioner may refuse a license to any applicant  
11 under the provisions of this article if the commissioner ~~shall be~~  
12 is of the opinion:

13 (1) That the applicant is not a suitable person to be  
14 licensed;

15 (2) That the place to be occupied by the applicant is not a  
16 suitable place or is within three hundred feet of any school or  
17 church measured from front door to front door along the street or  
18 streets. ~~Provided, That~~ This requirement ~~shall~~ does not apply to  
19 a Class B licensee or to ~~any~~ a place now occupied by a beer  
20 licensee so long as it is continuously so occupied. ~~Provided,~~  
21 ~~however, That~~ The prohibition against locating any such place ~~to be~~  
22 ~~occupied by an applicant~~ within three hundred feet of ~~any~~ a school  
23 ~~shall~~ does not apply to ~~any~~ a college or university that has  
24 notified the commissioner, in writing, that it has no objection to

1 the location of any such place within three hundred feet; ~~of such~~  
2 ~~college or university;~~ or

3 (3) That the license should not be issued for reason of  
4 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.