

1 **H. B. 2944**

2
3 (By Delegate Skinner)

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

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10 A BILL to amend and reenact §11-16-8 of the Code of West Virginia,
11 1931, as amended, relating to permitting the sale of
12 nonintoxicating beer within a certain distance from a church
13 that consents to the sale.

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

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

17 **ARTICLE 16. NONINTOXICATING BEER.**

18 **§11-16-8. Form of application for license; fee and bond; refusal**
19 **of license.**

20 (a) A license may be issued by the commissioner to any person
21 who submits an application therefor, accompanied by a license fee,
22 and, where required, a bond, stating under oath:

23 (1) The name and residence of the applicant, the duration of

1 such residency, that the applicant has been a resident of the state
2 for a period of two years next preceding the date of the
3 application and that the applicant is twenty-one years of age. If
4 the applicant is a firm, association, partnership, limited
5 partnership or corporation, the application shall include the
6 residence of the members or officers for a period of two years next
7 preceding the date of such application: *Provided*, That if any
8 person, firm, partnership, limited partnership, association or
9 corporation applies for a license as a distributor, such person, or
10 in the case of a firm, partnership, limited partnership or
11 association, the members or officers thereof shall state under oath
12 that each has been a bona fide resident of the state for four years
13 preceding the date of such application;

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

1 whom must qualify and sign the application: *Provided*, That the
2 requirements as to residence shall not apply to the officers of a
3 corporation which shall apply for a retailer's license, but the
4 officers, agent, or employee who shall manage and be in charge of
5 the licensed premises shall possess all of the qualifications
6 required of an individual applicant for a retailer's license,
7 including the requirement as to residence;

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

10 (4) The name of the owner of the building and, if the owner is
11 not the applicant, that such applicant is the actual and bona fide
12 lessee of the premises;

13 (5) (A) That the place or building in which is proposed to do
14 business conforms to all laws of health, fire and zoning
15 regulations applicable thereto, and is a safe and proper place or
16 building, and is not 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 not apply to a
19 Class B license, or to any place now occupied by a beer licensee,
20 so long as it is continuously so occupied: *Provided, however*, That
21 the prohibition against locating any such proposed business in a
22 place or building within three hundred feet of any school shall not
23 apply to any college or university that has notified the
24 Commissioner, in writing, that it has no objection to the location

1 of any such proposed business in a place or building within three
2 hundred feet of such college or university.

3 (B) Notwithstanding any provision of subdivision (1) of this
4 subsection to the contrary, for applications for licenses filed for
5 periods beginning after June 31, 2013, where the location of the
6 proposed business is within three hundred feet of a church, the
7 application shall state that each of the requirements of paragraph
8 (B), subdivision (2), subsection (c) of this section have been met.

9 (6) That the applicant is not incarcerated and has not during
10 the five years immediately preceding the date of said application
11 been convicted of a felony;

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

16 (8) That the applicant has not during five years next
17 immediately preceding the date of said application had a
18 nonintoxicating beer license revoked.

19 (b) The provisions and requirements of subsection (a) of this
20 section are mandatory prerequisites for the issuance, and in the
21 event any applicant fails to qualify under the same, license shall
22 be refused. In addition to the information furnished in any
23 application, the commissioner may make such additional and
24 independent investigation of each applicant, and of the place to be

1 occupied, as deemed necessary or advisable; and for this reason
2 each and all applications, with license fee and bond, must be filed
3 thirty days prior to the beginning of any fiscal year, and if
4 application is for an unexpired portion of any fiscal year,
5 issuance of license may be withheld for such reasonable time as
6 necessary for investigation.

7 (c) The commissioner may refuse a license to any applicant
8 under the provisions of this article if the commissioner shall be
9 of the opinion:

10 (1) That the applicant is not a suitable person to be
11 licensed;

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

24 (B) That the requirements of this paragraph are not met.

1 Notwithstanding any provision of paragraph (A) of this subdivision
2 to the contrary, for applications for licenses filed for periods
3 beginning after June 31, 2013, the location of the place or
4 building in which an licensee or applicant does or proposes to do
5 business not otherwise exempted pursuant to said paragraph (A) may
6 be within three hundred feet of a church if the following
7 requirements are met:

8 (i) The governing body of such church has notified the
9 commissioner, in writing, that it has no objection to the operation
10 and location of the business proposed by the applicant in a place
11 or building within three hundred feet of the church;

12 (ii) The applicant provided information about the outside
13 appearance and floor plan of the business location to the governing
14 body of the church prior to gaining the church's approval;

15 (iii) The business has been operated by the applicant or the
16 applicant's predecessor in interest in the business at the location
17 for at least one year prior to making application;

18 (iv) During the period of beer licensure, no video lottery
19 machines are operated at the location unless video lottery machines
20 were duly operated at the location by the applicant or the
21 applicant's predecessor in interest in the business on the
22 effective date of the amendment and reenactment of this section in
23 two thousand six; and

24 (v) The governing body of the church has not rescinded its

1 approval of the operation and location of the business within three
2 hundred feet of the church, which the governing body is authorized
3 to do effective one year after the issuance of the license and each
4 successive anniversary thereafter; or

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

NOTE: The purpose of this bill is to permit the sale of nonintoxicating beer within a certain distance from a church that consents to the sale.

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