

Senate Bill No. 172

(By Senator Kessler (Mr. President))

[Introduced February 15, 2013; referred to the Committee on the
Judiciary.]

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 company
13 to the definition of "person" under the act; allowing a trust
14 to be an applicant for a distributor license; and requiring
15 certain disclosures by applicants that are trusts or limited
16 liability companies.

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

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

20 **ARTICLE 16. NONINTOXICATING BEER.**

21 **§11-16-3. Definitions.**

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

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

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

10 (3) "Commissioner" means the West Virginia Alcohol Beverage
11 Control Commissioner.

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

1 forty-four-d of this code.

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

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

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

21 (8) "Person" means and includes an individual, firm,
22 partnership, limited partnership, limited liability company,
23 association or corporation.

1 (9) "Resident brewer" means any person, firm, association,
2 partnership or corporation whose principal place of business is
3 within the state.

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

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

10 **§11-16-8. Form of application for license; fee and bond; refusal**
11 **of license.**

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

15 (1) The name and residence of the applicant, the duration of
16 such residency, that the applicant has been a resident of the state
17 for a period of two years ~~next~~ preceding the date of the
18 application and that the applicant is twenty-one years of age. If
19 the applicant is a firm, association, partnership, limited
20 partnership, limited liability company or corporation, the
21 application shall include the residence of the members or officers
22 for a period of two years ~~next~~ preceding the date of such
23 application. ~~Provided, That if any~~ If a person, firm, partnership,

1 limited partnership, ~~association or corporation~~ limited liability
2 company, association, corporation or trust applies for a license as
3 a distributor, such person, or in the case of a firm, partnership,
4 limited partnership, ~~or association, the members or officers~~
5 ~~thereof~~ limited liability company, association or trust, the
6 members, officers, trustees or other persons in active control of
7 the activities of the trust relating to the license, shall state
8 under oath that each has been a bona fide resident of the state for
9 four years preceding the date of such application. If the
10 applicant is a trust, the trustees or other persons in active
11 control of the activities of the trust relating to the license,
12 shall provide a certification of trust as described in section one-
13 thousand-thirteen, article ten, chapter forty-four-d of this code.
14 This certification of trust shall include the excerpts described in
15 subsection (e), section one-thousand-thirteen, article ten, chapter
16 forty-four-d of this code and shall state, under oath, the names
17 and addresses of the beneficiaries of the trust and that the
18 trustee and beneficiaries are twenty-one years of age or older. If
19 a beneficiary is not twenty-one years of age, the certification of
20 trust must state that such beneficiary's interest in the trust is
21 represented by a trustee, parent or legal guardian who is twenty-
22 one years old and who will direct all actions on behalf of such
23 beneficiary related to the trust with respect to the distributor

1 until the beneficiary is twenty-one.

2 (2) The place of birth of applicant, that he or she is a
3 citizen of the United States and of good moral character and, if a
4 naturalized citizen, when and where naturalized. ~~and, if~~ If the
5 applicant is a corporation organized or authorized to do business
6 under the laws of the state, the application must state when and
7 where incorporated, ~~with~~ the name and address of each officer; that
8 each officer is a citizen of the United States and a person of good
9 moral character. ~~and if a firm, association, partnership or limited~~
10 ~~partnership,~~ If the applicant is a firm, association, limited
11 liability company, partnership, limited partnership or trust, the
12 application shall provide the place of birth of each member of the
13 firm, association, ~~partnership or limited partnership~~ and that each
14 ~~member~~ limited liability company, partnership or limited
15 partnership and of the trustees, beneficiaries or other persons in
16 active control of the activities of the trust relating to the
17 license and that each member or trustee, beneficiary or other
18 persons in active control of the activities of the trust relating
19 to the license is a citizen of the United States and if a
20 naturalized citizen, when and where naturalized, each of whom must
21 qualify and sign the application. ~~Provided, That~~ The requirements
22 as to residence ~~shall~~ do not apply to the officers of a corporation
23 ~~which shall apply~~ applying for a retailer's license but the

1 officers, agent or employee who ~~shall manage and be in charge~~
2 manages and is in charge of the licensed premises shall possess all
3 of the qualifications required of an individual applicant for a
4 retailer's license including the requirement as to residence;

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

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

10 (5) That the place or building in which is proposed to do
11 business conforms to all applicable laws of health, fire and zoning
12 regulations ~~applicable thereto~~, and is a safe and proper place or
13 building ~~and is~~ not within three hundred feet of ~~any~~ a school or
14 church measured from front door to front door, along the street or
15 streets. ~~Provided, That~~ This requirement ~~shall~~ does not apply to
16 a Class B license or to ~~any~~ a 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~~ a proposed business in a
19 place or building within three hundred feet of ~~any~~ a school ~~shall~~
20 does not apply to ~~any~~ a college or university that has notified the
21 commissioner, in writing, that it has no objection to the location
22 of ~~any such~~ a proposed business in a place or building within three
23 hundred feet of such college or university;

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

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

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

11 (b) The provisions and requirements of subsection (a) of this
12 section are mandatory prerequisites for the issuance, and in the
13 event any applicant fails to qualify under the same, the license
14 shall be refused. In addition to the information furnished in any
15 application, the commissioner may make such additional and
16 independent investigation of each applicant and of the place to be
17 occupied as ~~deemed~~ necessary or advisable and, for this reason,
18 ~~each and~~ all applications, with license fee and bond, must be filed
19 thirty days prior to the beginning of any fiscal year. ~~and if~~ If
20 the application is for an unexpired portion of ~~any~~ a fiscal year,
21 the issuance of license may be withheld for such reasonable time as
22 necessary for investigation.

23 (c) The commissioner may refuse a license to any applicant

1 under the provisions of this article if the commissioner ~~shall be~~
2 is of the opinion:

3 (1) That the applicant is not a suitable person to be
4 licensed;

5 (2) That the place to be occupied by the applicant is not a
6 suitable place or is within three hundred feet of any school or
7 church measured from front door to front door along the street or
8 streets. ~~Provided, That~~ This requirement ~~shall~~ does not apply to
9 a Class B licensee or to ~~any~~ a place now occupied by a beer
10 licensee so long as it is continuously so occupied. ~~Provided,~~
11 ~~however, That~~ The prohibition against locating any such place ~~to be~~
12 ~~occupied by an applicant~~ within three hundred feet of ~~any~~ a school
13 ~~shall~~ does not apply to ~~any~~ a college or university that has
14 notified the commissioner, in writing, that it has no objection to
15 the location of any such place within three hundred feet; ~~of such~~
16 ~~college or university;~~ or

17 (3) That the license should not be issued for reason of
18 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.