

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 172

(By Senator Kessler (Mr. President))

[Originating in the Committee on the Judiciary;
reported February 26, 2013.]

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 generally; expanding the definition of “person” for purposes of holding a nonintoxicating beer distributorship; allowing trusts, limited liability companies and associations to hold a distributor’s license; and requiring certain disclosures by applicants that are trusts, limited liability companies or associations.

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
10 nonintoxicating 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) “Class A retail license” means a retail license
14 permitting the retail sale of liquor at a freestanding liquor
15 retail outlet licensed pursuant to chapter sixty of this code.

16 (4) “Commissioner” means the West Virginia Alcohol
17 Beverage Control Commissioner.

18 (5) “Distributor” means and includes any person jobbing
19 or distributing nonintoxicating beer to retailers at wholesale
20 and whose warehouse and chief place of business shall be
21 within this state. For the purpose of a distributor only, the
22 term “person” means and includes an individual, firm, trust,
23 partnership, limited partnership, limited liability company,
24 association or corporation. Any trust licensed as a distributor
25 or any trust that is an owner of a distributor licensee, and the
26 trustee or other persons in active control of the activities of
27 the trust relating to the distributor license, is liable for acts of
28 the trust or its beneficiaries relating to the distributor license
29 that are unlawful acts or violations of article eleven of this
30 chapter notwithstanding the liability of trustees in article ten,
31 chapter forty-four-d of this code.

32 (6) “Freestanding liquor retail outlet” means a retail
33 outlet that sells only liquor, beer, nonintoxicating beer and
34 other alcohol-related products, as defined pursuant to section
35 four, article three-a, chapter sixty of this code.

36 (7) “Nonintoxicating beer” means all cereal malt
37 beverages or products of the brewing industry commonly
38 referred to as beer, lager beer, ale and all other mixtures and
39 preparations produced by the brewing industry, including
40 malt coolers and nonintoxicating craft beers containing at
41 least one half of one percent alcohol by volume, but not more
42 than nine and six-tenths of alcohol by weight, or twelve
43 percent by volume, whichever is greater. ~~all of which are~~
44 ~~hereby declared to be nonintoxicating and~~ The word “liquor”
45 as used in chapter sixty of this code ~~shall not be construed to~~
46 does not include or embrace nonintoxicating beer nor any of
47 the beverages, products, mixtures or preparations included
48 within this definition.

49 (8) “Nonintoxicating beer sampling event” means an
50 event approved by the commissioner for a Class A retail
51 licensee to hold a nonintoxicating beer sampling authorized
52 pursuant to section eleven-a of this article.

53 (9) “Nonintoxicating beer sampling day” means any days
54 and hours of the week where Class A retail licensees may sell

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

59 (10) “Nonintoxicating craft beer” means any beverage
60 obtained by the fermentation of barley, malt, hops or any
61 other similar product or substitute and containing not less
62 than one half of one percent by volume and not more than
63 twelve percent alcohol by volume or nine and six-tenths
64 percent alcohol by weight.

65 (11) “Original container” means the container used by the
66 brewer at the place of manufacturing, bottling or otherwise
67 producing nonintoxicating beer for sale at wholesale.

68 (12) “Person” means and includes an individual, firm,
69 partnership, limited partnership, limited liability company,
70 association or corporation.

71 (13) “Resident brewer” means any person, firm,
72 association, partnership or corporation whose principal place
73 of business is within the state.

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

79 (15) "Tax Commissioner" means the Tax Commissioner
80 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 corporation,

11 the application shall include the residence of the members or
12 officers for a period of two years ~~next~~ preceding the date of
13 such application. ~~Provided, That if any~~ If a person, firm,
14 partnership, limited partnership, ~~association or corporation~~
15 limited liability company, association, corporation or trust
16 applies for a license as a distributor, such person, or in the
17 case of a firm, partnership, limited partnership, ~~or~~
18 ~~association, the members or officers thereof~~ limited liability
19 company, association or trust, the members, officers, trustees
20 or other persons in active control of the activities of the
21 limited liability company, association or trust relating to the
22 license, shall state under oath that each has been a bona fide
23 resident of the state for four years preceding the date of such
24 application. If the applicant is a trust or has a trust as an
25 owner, the trustees or other persons in active control of the
26 activities of the trust relating to the license shall provide a
27 certification of trust as described in section one-thousand-
28 thirteen, article ten, chapter forty-four-d of this code. This
29 certification of trust shall include the excerpts described in

30 subsection (e), section one-thousand-thirteen, article ten,
31 chapter forty-four-d of this code and shall further state, under
32 oath, the names, addresses, Social Security numbers and birth
33 dates of the beneficiaries of the trust and certify that the
34 trustee and beneficiaries are twenty-one years of age or older.
35 If a beneficiary is not twenty-one years of age, the
36 certification of trust must state that such beneficiary's interest
37 in the trust is represented by a trustee, parent or legal
38 guardian who is twenty-one years of age and who will direct
39 all actions on behalf of such beneficiary related to the trust
40 with respect to the distributor until the beneficiary is twenty-
41 one years of age. Any beneficiary who is not twenty-one
42 years of age or older shall have his or her trustee, parent or
43 legal guardian include in the certification of trust and state
44 under oath his or her name, address, Social Security number
45 and birth date.

46 (2) The place of birth of applicant, that he or she is a
47 citizen of the United States and of good moral character and,
48 if a naturalized citizen, when and where naturalized. ~~and~~, If

49 the applicant is a corporation organized or authorized to do
50 business under the laws of the state, the application must
51 state when and where incorporated, with the name and
52 address of each officer and that each officer is a citizen of the
53 United States and a person of good moral character. ~~and if a~~
54 ~~firm, association, partnership or limited partnership,~~ If the
55 applicant is a firm, association, limited liability company,
56 partnership, limited partnership, trust or has a trust as an
57 owner, the application shall provide the place of birth of each
58 member of the firm, association, ~~partnership or limited~~
59 ~~partnership and that each member~~ limited liability company,
60 partnership or limited partnership and of the trustees,
61 beneficiaries or other persons in active control of the
62 activities of the trust relating to the license and that each
63 member or trustee, beneficiary or other persons in active
64 control of the activities of the trust relating to the license is a
65 citizen of the United States and if a naturalized citizen, when
66 and where naturalized, each of whom must qualify and sign
67 the application. ~~Provided, That~~ The requirements as to

68 residence ~~shall~~ do not apply to the officers of a corporation
69 ~~which shall apply~~ applying for a retailer's license but the
70 officers, agent or employee who ~~shall manage and be in~~
71 ~~charge~~ manages and is in charge of the licensed premises
72 shall possess all of the qualifications required of an
73 individual applicant for a retailer's license including the
74 requirement as to residence;

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

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

80 (5) That the place or building in which is proposed to do
81 business conforms to all applicable laws of health, fire and
82 zoning regulations ~~applicable thereto~~, and is a safe and
83 proper place or building ~~and is~~ not within three hundred feet
84 of ~~any~~ a school or church measured from front door to front
85 door, along the street or streets. ~~Provided, That~~ This
86 requirement ~~shall~~ does not apply to a Class B license or to

87 ~~any a~~ place ~~now~~ occupied by a beer licensee so long as it is
88 continuously so occupied. ~~Provided, however, That~~ The
89 prohibition against locating ~~any such a~~ proposed business in
90 a place or building within three hundred feet of ~~any a~~ school
91 ~~shall does~~ not apply to ~~any a~~ college or university that has
92 notified the commissioner, in writing, that it has no objection
93 to the location of ~~any such a~~ proposed business in a place or
94 building within three hundred feet of ~~such the~~ college or
95 university;

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

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

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

106 (b) In the case of an applicant that is trust or has a trust as
107 an owner, a distributor license may be issued only upon
108 submission by the trustees or other persons in active control
109 of the activities of the trust relating to the distributor license
110 of a true and correct copy of the written trust instrument to
111 the commissioner for his or her review. Notwithstanding any
112 provision of law to the contrary, the copy of the written trust
113 instrument submitted to the commissioner pursuant to this
114 section is confidential and is not a public record and is not
115 available for release pursuant to the West Virginia Freedom
116 of Information Act codified in chapter twenty-nine-b, article
117 one of this code.

118 (c) The provisions and requirements of subsection (a) of
119 this section are mandatory prerequisites for the issuance, and
120 ~~in the event if~~ any applicant fails to qualify ~~under the same,~~
121 the license shall be refused. In addition to the information
122 furnished in any application, the commissioner may make
123 such additional and independent investigation of each
124 applicant and of the place to be occupied as ~~deemed~~

125 necessary or advisable and, for this reason, ~~each and~~ all
126 applications, with license fee and bond, must be filed thirty
127 days prior to the beginning of any fiscal year. ~~and~~ If the
128 application is for an unexpired portion of ~~any~~ a fiscal year,
129 the issuance of license may be withheld for such reasonable
130 time as necessary for investigation.

131 ~~(c)~~ (d) The commissioner may refuse a license to any
132 applicant under the provisions of this article if the
133 commissioner ~~shall be~~ is of the opinion:

134 (1) That the applicant is not a suitable person to be
135 licensed;

136 (2) That the place to be occupied by the applicant is not
137 a suitable place or is within three hundred feet of any school
138 or church measured from front door to front door along the
139 street or streets. ~~Provided, That~~ This requirement ~~shall~~ does
140 not apply to a Class B licensee or to ~~any~~ a place now
141 occupied by a beer licensee so long as it is continuously so
142 occupied. ~~Provided, however, That~~ The prohibition against
143 locating any such place ~~to be occupied by an applicant~~ within

144 three hundred feet of ~~any~~ a school ~~shall~~ does not apply to ~~any~~
145 a college or university that has notified the commissioner, in
146 writing, that it has no objection to the location of any such
147 place within three hundred feet; ~~of such college or university;~~
148 or

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