

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

House Bill 3100

BY DELEGATES ESPINOSA, COWLES AND HOUSEHOLDER

[Originating in the Committee on Government

Organization, February 22, 2019.]

1 A BILL to amend and reenact §11-16-3, §11-16-5, §11-16-6a, §11-16-6b, §11-16-8, §11-16-9,
2 §11-16-10, §11-16-12, and §11-16-17a of the Code of West Virginia, 1931, as amended,
3 all relating to clarifying certain provisions of the Nonintoxicating Beer Act by creating a
4 temporary license for nonintoxicating beer floor plan extensions of existing licensee
5 floorplans; implementing a fee for the license; removing the two growler limit per patron
6 per day for licensees who sell growlers for off premises consumption; providing a 30-day
7 requirement to issue or deny a license application once the application is completed;
8 implementing a reactivation fee for licensees that fail to timely file their renewal
9 applications and pay their license fees; creating a transportation permit for nonintoxicating
10 beer; implementing a fee for the permit; licensing brewers, resident brewers and distributor
11 representatives; implementing a fee for the license; removing the bond requirements for
12 brewers, resident brewers, distributors and Class S licenses; requiring nonintoxicating
13 beer label registration; and implementing a fee for the registration and subsequent
14 renewals every three years.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

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

2 (1) "Brand" means a nonintoxicating beer product manufactured, brewed, mixed,
3 concocted, blended, bottled or otherwise produced, ~~or~~ imported, or transshipped by a brewer or
4 manufacturer, the labels of which have been registered and approved by the commissioner that
5 is being offered for sale or sold in West Virginia by a distributor who has been appointed in a valid
6 franchise agreement or a valid amendment thereto.

7 (2) "Brewer" or "manufacturer" means any person manufacturing, otherwise producing or
8 importing or transshipping nonintoxicating beer or nonintoxicating craft beer for sale at wholesale
9 to any licensed distributor. Brewer or manufacturer may be used interchangeably throughout this

10 article. A brewer may obtain only one brewer's license for its nonintoxicating beer or
11 nonintoxicating craft beer.

12 (3) "Brewpub" means a place of manufacture of nonintoxicating beer or nonintoxicating
13 craft beer owned by a resident brewer, subject to federal and state regulations and guidelines, a
14 portion of which premises ~~are~~ is designated for retail sales of nonintoxicating beer or
15 nonintoxicating craft beer by the resident brewer owning the brewpub.

16 (4) "Class A retail license" means a retail license permitting the retail sale of liquor at a
17 freestanding liquor retail outlet licensed pursuant to chapter 60 of this code.

18 (5) "Class B retail license" means a retail license permitting the retail sale of liquor at a
19 mixed retail liquor outlet licensed pursuant to chapter 60 of this code.

20 (6) "Commissioner" means the West Virginia Alcohol Beverage Control Administration
21 Commissioner.

22 (7) "Distributor" means and includes any person jobbing or distributing nonintoxicating
23 beer or nonintoxicating craft beer to retailers at wholesale and whose warehouse and chief place
24 of business shall be within this state. For purposes of a distributor only, the term "person" means
25 and includes an individual, firm, trust, partnership, limited partnership, limited liability company,
26 association or corporation. Any trust licensed as a distributor or any trust that is an owner of a
27 distributor licensee, and the trustee or other persons in active control of the activities of the trust
28 relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the
29 distributor license that are unlawful acts or violations of §11-11-1 *et seq.* of this code
30 notwithstanding the liability of trustees in §44D-10-1 *et seq.*, of this code.

31 (8) "Franchise agreement" means the written agreement between a brewer and a
32 distributor that is identical as to terms and conditions between the brewer and all its distributors,
33 which agreement has been approved by the commissioner. The franchise agreement binds the
34 parties so that a distributor, appointed by a brewer, may distribute all of the brewer's
35 nonintoxicating beer products, brands or family of brands imported and offered for sale in West

36 Virginia, including, but not limited to, existing brands, line extensions, and new brands all in the
37 brewer's assigned territory for the distributor. All brands and line extensions being imported or
38 offered for sale in West Virginia must be listed by the brewer in the franchise agreement or a
39 written amendment to the franchise agreement. A franchise agreement may be amended by
40 mutual written agreement of the parties as approved by the commissioner with identical terms
41 and conditions for a brewer and all of its distributors. Any approved amendment to the franchise
42 agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually
43 agree in writing to cancel a franchise agreement. A distributor terminated by a brewer as provided
44 in this article and the promulgated rules no longer has a valid franchise agreement. If a brewer
45 has reached an agreement to cancel a distributor or has terminated a distributor, then a brewer
46 may appoint a successor distributor who accedes to all the rights of the cancelled or terminated
47 distributor.

48 (9) "Franchise distributor network" means the distributors who have entered into a binding
49 written franchise agreement, identical as to terms and conditions, to distribute nonintoxicating
50 beer products, brands and line extensions in an assigned territory for a brewer. A brewer may
51 only have one franchise distributor network: *Provided*, That a brewer that has acquired the
52 manufacturing, bottling, or other production rights for the sale of nonintoxicating beer at wholesale
53 from a selling brewer as specified in §11-16-21(a)(2) of this code shall continue to maintain and
54 be bound by the selling brewer's separate franchise distributor's network for any of its existing
55 brands, line extensions and new brands.

56 (10) "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, wine,
57 beer, nonintoxicating beer, and other alcohol-related products, as defined pursuant to §60-3A-4
58 of this code.

59 (11) "Growler" means a container or jug that is made of glass, ceramic, metal, or other
60 material approved by the commissioner, that may be only 32 or 64 fluid ounces in size and must
61 be capable of being securely sealed. The growler is utilized by an authorized licensee for

62 purposes of off-premise sales only of nonintoxicating beer or nonintoxicating craft beer for
63 personal consumption not on a licensed premise and not for resale. Notwithstanding any other
64 provision of this code to the contrary, a securely sealed growler is not an open container under
65 federal, state and local law. A growler with a broken seal is an open container under federal, state
66 and local law unless it is located in an area of the motor vehicle physically separated from the
67 passenger compartment. The secure sealing of a growler requires the use of a tamper-resistant
68 seal, security tape, or other material, as approved by the commissioner, placed on or over the
69 growler's opening, which seal, security tape or other material is clearly marked with the date of
70 the secure sealing by the authorized licensee who is selling the growler.

71 (12) "Line extension" means any nonintoxicating beer product that is an extension of brand
72 or family of brands that is labeled, branded, advertised, marketed, promoted, or offered for sale
73 with the intent or purpose of being manufactured, imported, associated, contracted, affiliated, or
74 otherwise related to a brewer's existing brand through the use of a brewer, its subsidiaries, parent
75 entities, contracted entities, affiliated entities, or other related entities. In determining whether a
76 nonintoxicating beer product is a line extension, the commissioner may consider, but is not limited
77 to, the following factors: Name or partial name; trade name or partial trade name; logos;
78 copyrights; trademarks or trade design; product codes; advertising promotion; or pricing.

79 (13) "Nonintoxicating beer" means all natural cereal malt beverages or products of the
80 brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and
81 preparations produced by the brewing industry, including malt coolers and nonintoxicating craft
82 beers with no caffeine infusion or any additives masking or altering the alcohol effect containing
83 at least one half of one percent alcohol by volume, but not more than nine and six-tenths of alcohol
84 by weight, or 12 percent by volume, whichever is greater. The word "liquor" as used in chapter 60
85 of this code does not include or embrace nonintoxicating beer nor any of the beverages, products,
86 mixtures, or preparations included within this definition.

87 (14) “Nonintoxicating beer floor plan extension” means a temporary,ui one-day extension
88 of an existing Class A licensee’s floor plan to a contiguous, adjoining and bounded area, such as
89 a parking lot or outdoor area, which shall for the temporary period encompass the licensee’s
90 licensed premises; further such license shall be endorsed or approved by the county or
91 municipality where the license is located; such license shall be in good standing with the
92 commissioner, and further such temporary event shall cease on or before midnight of the
93 approved temporary one-day event.

94 (15) “Nonintoxicating beer sampling event” means an event approved by the
95 commissioner for a Class A retail licensee to hold a nonintoxicating beer sampling authorized
96 pursuant to §11-16-11a of this code.

97 ~~(15)~~ (16) “Nonintoxicating beer sampling day” means any days and hours of the week
98 where Class A retail licensees may sell nonintoxicating beer pursuant to §11-16-11a and §11-16-
99 18(a)(1) of this code, and is approved, in writing, by the commissioner to conduct a nonintoxicating
100 beer sampling event.

101 ~~(16)~~ (17) “Nonintoxicating craft beer” means any beverage obtained by the natural
102 fermentation of barley, malt, hops, or any other similar product or substitute and containing not
103 less than one half of one percent by volume and not more than 12 percent alcohol by volume or
104 nine and six-tenths percent alcohol by weight with no caffeine infusion or any additives masking
105 or altering the alcohol effect.

106 ~~(17)~~ (18) “Original container” means the container used by a resident brewer or brewer at
107 the place of manufacturing, bottling, or otherwise producing nonintoxicating beer or
108 nonintoxicating craft beer for sale at wholesale.

109 ~~(18)~~ (19) “Person” means and includes an individual, firm, partnership, limited partnership,
110 limited liability company, association, or corporation.

111 ~~(19)~~ (20) “Private club” means a license issued pursuant to §60-7-1 *et seq.*, of this code.

112 ~~(20)~~ (21) “Resident brewer” means any brewer or manufacturer of nonintoxicating beer or
113 nonintoxicating craft beer whose principal place of business and manufacture is located in the
114 State of West Virginia and which does not brew or manufacture more than 25,000 barrels of
115 nonintoxicating beer or nonintoxicating craft beer annually, and does not self-distribute more than
116 10,000 barrels thereof in the State of West Virginia annually.

117 ~~(24)~~ (22) “Retailer” means any person selling, serving, or otherwise dispensing
118 nonintoxicating beer and all products regulated by this article, including, but not limited to, malt
119 coolers at his or her established and licensed place of business.

120 ~~(22)~~ (23) “Tax Commissioner” means the Tax Commissioner of the State of West Virginia
121 or the commissioner’s designee.

§11-16-5. State license required; alcoholic content of beer manufactured for sale without state.

1 No person shall manufacture, tender, sell, possess for sale, transport or distribute
2 nonintoxicating beer except in accordance with the provisions of this article, and after first
3 obtaining a state license therefor, as provided in this article. ~~Nothing contained in this article shall~~
4 ~~prohibit any brewer located within the state from manufacturing or transporting for sale without~~
5 ~~the state beer of an alcoholic strength greater than that of nonintoxicating beer~~

§11-16-6a. Brewer and resident brewer license to manufacture, sell and provide complimentary samples.

1 (a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to
2 regulate, control and support the brewing, manufacturing, distribution, sale, consumption,
3 transportation and storage of nonintoxicating beer and nonintoxicating craft beer and its industry
4 in this state in order to protect the public health, welfare and safety of the citizens of this state,
5 and promote hospitality and tourism. Therefore, this section authorizes a licensed brewer or
6 resident brewer with its principal place of business and manufacture located in this state to have
7 certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer

8 manufactured in this state for the benefit of the citizens of this state, the state's growing brewing
9 industry and the state's hospitality and tourism industry, all of which are vital components for the
10 state's economy.

11 (b) *Sales of nonintoxicating beer.* — A licensed brewer or resident brewer with its principal
12 place of business and manufacture located in the State of West Virginia may offer only
13 nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident
14 brewer for retail sale to customers from the brewer's or resident brewer's licensed premises for
15 consumption off the licensed premises only in the form of kegs, bottles, cans or growlers for
16 personal consumption and not for resale. A licensed brewer or resident brewer may not sell, give
17 or furnish nonintoxicating beer for consumption on the premises of the principal place of business
18 and manufacture located in the State of West Virginia, except for the limited purpose of
19 complimentary samples as permitted in subsection (c) of this section.

20 (c) *Complimentary samples.* — A licensed brewer or resident brewer with its principal
21 place of business and manufacture located in the State of West Virginia may only offer
22 complimentary samples of nonintoxicating beer or nonintoxicating craft beer brewed at the
23 brewer's or resident brewer's principal place of business and manufacture located in the State of
24 West Virginia. The complimentary samples may be no greater than two ounces per sample per
25 patron, and a sampling shall not exceed 10 complimentary two-ounce samples per patron per
26 day. A licensed brewer or resident brewer providing complimentary samples shall provide
27 complimentary food items to the patron consuming the complimentary samples; and prior to any
28 sampling, verify, using proper identification, that the patron sampling is 21 years of age or over
29 and that the patron is not visibly intoxicated.

30 (d) *Retail sales.* — Every licensed brewer or resident brewer under this section shall
31 comply with all the provisions of this article as applicable to nonintoxicating beer retailers when
32 conducting sales of nonintoxicating beer or nonintoxicating craft beer and shall be subject to all
33 applicable requirements and penalties in this article.

34 (e) *Payment of taxes and fees.* — A licensed brewer or resident brewer under this section
35 shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in addition to any
36 other taxes and fees required, and meet applicable licensing provisions as required by this
37 chapter and by rule of the commissioner.

38 (f) *Advertising.* — A licensed brewer or resident brewer under this section may advertise
39 a particular brand or brands of nonintoxicating beer or nonintoxicating craft beer produced by the
40 licensed brewer or resident brewer and the price of the nonintoxicating beer or nonintoxicating
41 craft beer subject to state and federal requirements or restrictions. The advertisement may not
42 encourage intemperance.

43 (g) *Growler requirements.* — A licensed brewer or resident brewer under this section must
44 fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensed
45 brewer or resident brewer under this section must sanitize, fill, securely seal and label any growler
46 prior to its sale. A licensed brewer or resident brewer under this section may only offer for retail
47 sale ~~up to two~~ 64-ounce or ~~four~~ 32-ounce growlers of nonintoxicating beer or nonintoxicating craft
48 beer manufactured by the licensed brewer or resident brewer ~~per customer per day~~ for personal
49 consumption off of the licensed premises and not for resale. A licensed brewer or resident brewer
50 under this section may refill a growler subject to the requirements of this section. A licensed
51 brewer or resident brewer shall visually inspect any growler before filling or refilling it. A licensed
52 brewer or resident brewer may not fill or refill any growler that appears to be cracked, broken,
53 unsafe or otherwise unfit to serve as a sealed beverage container.

54 (h) *Growler labeling.* — A licensed brewer or resident brewer under this section selling
55 growlers shall affix a conspicuous label on all sold and securely sealed growlers listing the name
56 of the licensee selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft
57 beer in the growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating
58 craft beer in the growler and the date the growler was filled or refilled, and, further, all labeling on
59 the growler shall be consistent with all federal labeling and warning requirements.

60 (i) *Growler sanitation.* — A licensed brewer or resident brewer authorized under this
61 section shall clean and sanitize all growlers he or she fills or refills in accordance with all state
62 and county health requirements prior to its sealing. In addition, the licensed brewer or resident
63 brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap
64 lines, pipe lines, barrel tubes and any other related equipment used to fill or refill growlers. Failure
65 to comply with this subsection may result in penalties under §11-16-23 of this code.

66 (j) *Fee.* — There is no additional fee for a licensed brewer or resident brewer authorized
67 under this section to sell growlers.

68 (k) *Limitations on licensees.* — To be authorized under this section, a licensed brewer or
69 resident brewer may not produce more than 25,000 barrels per calendar year at the brewer's or
70 resident brewer's principal place of business and manufacture located in the State of West
71 Virginia. No more than one brewer or resident brewer license may be issued to a single person
72 or entity and no person may hold both a brewer and a resident brewer license. A licensed brewer
73 or resident brewer under this section may only conduct tours, give complimentary samples and
74 sell growlers during the hours of operation set forth in §11-16-18(a)(1), of this code. A licensed
75 brewer or resident brewer authorized under this section shall be subject to the applicable penalties
76 under §11-16-23 of this code for violations of this section.

77 (l) *Rules.* — The commissioner, in consultation with the Bureau for Public Health
78 concerning sanitation, is authorized to propose rules for legislative approval, pursuant to §29A-3-
79 1 *et seq.* of this code, to implement this section.

**§11-16-6b. Brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail
licensee and Class B retail licensee's authority to sell growlers.**

1 (a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to
2 regulate, control and support the brewing, manufacturing, distribution, sale, consumption,
3 transportation and storage of nonintoxicating beer and nonintoxicating craft beer and its industry
4 in this state in order to protect the public health, welfare and safety of the citizens of this state and

5 promote hospitality and tourism. Therefore, this section authorizes a licensed brewpub, Class A
6 retail dealer, Class B retail dealer, private club, Class A retail licensee or Class B retail licensee
7 to have certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating
8 craft beer manufactured in this state for the benefit of the citizens of this state, the state's growing
9 brewing industry and the state's hospitality and tourism industry, all of which are vital components
10 for the state's economy.

11 (b) *Sales of nonintoxicating beer.* — A licensed brewpub, Class A retail dealer, Class B
12 retail dealer, private club, Class A retail licensee or Class B retail licensee who pays the fee in
13 subsection (i) of this section and meets the requirements of this section may offer nonintoxicating
14 beer or nonintoxicating craft beer for retail sale to patrons from their licensed premises in a growler
15 for personal consumption only off of the licensed premises and not for resale. Prior to the sale,
16 the licensee shall verify, using proper identification, that any patron purchasing nonintoxicating
17 beer or nonintoxicating craft beer is 21 years of age or over and that the patron is not visibly
18 intoxicated. A licensee authorized under this section may not sell, give or furnish alcoholic liquors,
19 including wine, for consumption off of its licensed premises, unless it is a private club licensed to
20 sell sealed wine for consumption off of the licensed premises and meets the requirements set out
21 in §60-8-3(j) and §60-8-3(l) of this code, for the sale of wine, not liquor.

22 (c) *Retail sales.* — Every licensee authorized under this section shall comply with all the
23 provisions of this article as applicable to nonintoxicating beer retailers when conducting sales of
24 nonintoxicating beer or nonintoxicating craft beer and shall be subject to all applicable
25 requirements and penalties in this article.

26 (d) *Payment of taxes and fees.* — A licensee authorized under this section shall pay all
27 taxes and fees required of licensed nonintoxicating beer retailers, in addition to any other taxes
28 and fees required, and meet applicable licensing provisions as required by this chapter and by
29 rule of the commissioner.

30 (e) *Advertising.* — A licensee authorized under this section may advertise a particular
31 brand or brands of nonintoxicating beer or nonintoxicating craft beer and the price of the
32 nonintoxicating beer or nonintoxicating craft beer subject to state and federal requirements or
33 restrictions. The advertisement may not encourage intemperance.

34 (f) *Growler requirements.* — A licensee authorized under this section must fill a growler
35 and patrons are not permitted to access the secure area or fill a growler. A licensee authorized
36 under this section must sanitize, fill, securely seal and label any growler prior to its sale. A licensee
37 authorized under this section may only offer for retail sale ~~up to two~~ 64-ounce or ~~four~~ 32-ounce
38 growlers of nonintoxicating beer or nonintoxicating craft beer ~~per customer per day~~ for personal
39 consumption off of the licensed premises and not for resale. A licensee under this section may
40 refill a growler subject to the requirements of this section. A licensee shall visually inspect any
41 growler before filling or refilling it. A licensee may not fill or refill any growler that appears to be
42 cracked, broken, unsafe or otherwise unfit to serve as a sealed beverage container.

43 (g) *Growler labeling.* — A licensee authorized under this section selling growlers shall affix
44 a conspicuous label on all sold and securely sealed growlers listing the name of the licensee
45 selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer in the
46 growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating craft beer in
47 the growler and the date the growler was filled or refilled, and, further, all labeling on the growler
48 shall be consistent with all federal labeling and warning requirements.

49 (h) *Growler sanitation.* — A licensed brewer or resident brewer authorized under this
50 section shall clean and sanitize all growlers he or she fills or refills in accordance with all state
51 and county health requirements prior to its sealing. In addition, the licensed brewer or resident
52 brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap
53 lines, pipe lines, barrel tubes and any other related equipment used to fill or refill growlers. Failure
54 to comply with this subsection may result in penalties under §11-16-23 of this code.

55 (i) ~~Fee~~ Fees. — Commencing July 1, 2015, and by every July 1 thereafter, there is an
56 annual \$100 nonrefundable fee for a licensee, except for a licensed brewpub, to sell growlers as
57 provided by this section. The licensee must be in good standing with the state at the time of paying
58 the fee.

59 (j) *Limitations on licensees*. — A licensee under this section may only sell growlers during
60 the hours of operation set forth in §11-16-18(a)(1), of this code. Any licensee licensed under this
61 section must maintain a secure area for the sale of nonintoxicating beer or nonintoxicating craft
62 beer in a growler. The secure area must only be accessible by the licensee. Any licensee licensed
63 under this section shall be subject to the applicable penalties under §11-16-23 of this code for
64 violations of this section.

65 (k) *Nonapplicability of certain statutes*. — Notwithstanding any other provision of this code
66 to the contrary, licensees under this section are permitted to break the seal of the original
67 container for the limited purpose of filling a growler as provided in this section. Any unauthorized
68 sale of nonintoxicating beer or nonintoxicating craft beer or any consumption not permitted on the
69 licensee's licensed premises is subject to penalties under this article.

70 (l) *Rules*. — The commissioner is authorized to propose rules for legislative approval,
71 pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

§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 person who submits an
2 application, accompanied by a license fee and, where required, a bond, and states under oath:

3 (1) The name and residence of the applicant, the duration of such residency, that the
4 applicant has been a resident of the state for a period of two years preceding the date of the
5 application and that the applicant is 21 years of age. If the applicant is a firm, association,
6 partnership, limited partnership, limited liability company or corporation, the application shall
7 include the residence of the members or officers for a period of two years preceding the date of
8 such application. If a person, firm, partnership, limited partnership, limited liability company,

9 association, corporation or trust applies for a license as a distributor, such person, or in the case
10 of a firm, partnership, limited partnership, limited liability company, association or trust, the
11 members, officers, trustees or other persons in active control of the activities of the limited liability
12 company, association or trust relating to the license, shall state under oath that each has been a
13 bona fide resident of the state for four years preceding the date of such application. If the applicant
14 is a trust or has a trust as an owner, the trustees or other persons in active control of the activities
15 of the trust relating to the license shall provide a certification of trust as described in §44D-10-
16 1013 of this code. This certification of trust shall include the excerpts described in §44D-10-
17 1013(e), of this code and shall further state, under oath, the names, addresses, Social Security
18 numbers and birth dates of the beneficiaries of the trust and certify that the trustee and
19 beneficiaries are 21 years of age or older. If a beneficiary is not 21 years of age, the certification
20 of trust must state that such beneficiary's interest in the trust is represented by a trustee, parent
21 or legal guardian who is 21 years of age and who will direct all actions on behalf of such
22 beneficiary related to the trust with respect to the distributor until the beneficiary is 21 years of
23 age. Any beneficiary who is not 21 years of age or older shall have his or her trustee, parent or
24 legal guardian include in the certification of trust and state under oath his or her name, address,
25 Social Security number and birth date.

26 (2) The place of birth of applicant, that he or she is a citizen of the United States and of
27 good moral character and, if a naturalized citizen, when and where naturalized. If the applicant is
28 a corporation organized or authorized to do business under the laws of the state, the application
29 must state when and where incorporated, the name and address of each officer and that each
30 officer is a citizen of the United States and a person of good moral character. If the applicant is a
31 firm, association, limited liability company, partnership, limited partnership, trust or has a trust as
32 an owner, the application shall provide the place of birth of each member of the firm, association,
33 limited liability company, partnership or limited partnership and of the trustees, beneficiaries or
34 other persons in active control of the activities of the trust relating to the license and that each

35 member or trustee, beneficiary or other persons in active control of the activities of the trust
36 relating to the license is a citizen of the United States and if a naturalized citizen, when and where
37 naturalized, each of whom must qualify and sign the application. The requirements as to
38 residence do not apply to the officers of a corporation applying for a retailer's license but the
39 officers, agent or employee who manages and is in charge of the licensed premises shall possess
40 all of the qualifications required of an individual applicant for a retailer's license including the
41 requirement as to residence;

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

43 (4) The name of the owner of the building and, if the owner is not the applicant, that the
44 applicant is the actual and bona fide lessee of the premises;

45 (5) That the place or building in which is proposed to do business conforms to all applicable
46 laws of health, fire and zoning regulations and is a safe and proper place or building not within
47 three hundred feet of a school or church measured from front door to front door, along the street
48 or streets. This requirement does not apply to a Class B license or to a place occupied by a beer
49 licensee so long as it is continuously so occupied. The prohibition against locating a proposed
50 business in a place or building within 300 feet of a school does not apply to a college or university
51 that has notified the commissioner, in writing, that it has no objection to the location of a proposed
52 business in a place or building within 300 feet of the college or university;

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

55 (7) That the applicant is the only person in any manner pecuniarily interested in the
56 business so asked to be licensed and that no other person is in any manner pecuniarily interested
57 during the continuance of the license; and

58 (8) That the applicant has not during five years preceding the date of the application had
59 a nonintoxicating beer license revoked.

60 (b) In the case of an applicant that is trust or has a trust as an owner, a distributor license
61 may be issued only upon submission by the trustees or other persons in active control of the
62 activities of the trust relating to the distributor license of a true and correct copy of the written trust
63 instrument to the commissioner for his or her review. Notwithstanding any provision of law to the
64 contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this
65 section is confidential and is not a public record and is not available for release pursuant to the
66 West Virginia Freedom of Information Act codified in §29B-1-1 *et seq.* of this code.

67 (c) The provisions and requirements of subsection (a) of this section are mandatory
68 prerequisites for the issuance and if any applicant fails to qualify, the license shall be refused. In
69 addition to the information furnished in any application, the commissioner may make such
70 additional and independent investigation of each applicant and of the place to be occupied as
71 necessary or advisable and, for this reason, all applications, with license fee and bond, must be
72 ~~filed thirty days prior to the beginning of any fiscal year. If the application is for an unexpired~~
73 ~~portion of a fiscal year, the issuance of license may be withheld for such reasonable time as~~
74 ~~necessary for investigation~~ submitted with all true and correct information. For the purpose of
75 conducting such independent investigation, the commissioner may withhold the granting or
76 refusal to grant such license for a 30-day period or until the applicant has completed the conditions
77 set forth in this section. If it shall appear that such applicant meets the requirements in the code
78 and the rules, including, but not limited to, being a suitable person of good reputation and morals;
79 being located in a suitable place; having made no false statements or material
80 misrepresentations; not involving hidden ownership; not having persons with an undisclosed
81 pecuniary interest contained in such application; and along with no other omissions or failures by
82 the applicant to complete the application, as determined by the commissioner, the commissioner
83 shall issue a license authorizing the applicant to sell nonintoxicating beer or nonintoxicating craft
84 beer, and otherwise shall refuse to issue such license.

85 (d) The commissioner may refuse a license to any applicant under the provisions of this
86 article if the commissioner is of the opinion:

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

88 (2) That the place to be occupied by the applicant is not a suitable place or is within 300
89 feet of any school or church measured from front door to front door along the street or streets.
90 This requirement does not apply to a Class B licensee or to a place now occupied by a beer
91 licensee so long as it is continuously so occupied. The prohibition against locating any such place
92 within 300 feet of a school does not apply to a college or university that has notified the
93 commissioner, in writing, that it has no objection to the location of any such place within 300 feet;
94 or

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

**§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of
nonintoxicating beer permitted; distributors; brewers; brewpubs.**

1 (a) All retail dealers, distributors, brewpubs, brewers and resident brewers of
2 nonintoxicating beer and of nonintoxicating craft beer shall pay an annual fee to maintain an active
3 license as required by this article. The license period begins on July 1 of each year and ends on
4 June 30 of the following year. If the license is granted for a shorter period, then the license fee
5 shall be computed semiannually in proportion to the remainder of the fiscal year: Provided, That
6 if a licensee fails to complete a renewal application and make payment of its annual license fee
7 in renewing its license on or before June 30 of any subsequent year, after initial application, then
8 an additional \$150 reactivation fee shall be charged and paid by the licensee, the fee may not be
9 prorated or refunded, prior to the processing of any renewal application and applicable full year
10 annual license fee, and furthermore a licensee who continues to operate upon the expiration of
11 its license is subject to all fines, penalties and sanctions available in §11-16-23 of this code, all
12 as determined by the commissioner.

13 (b) The annual license fees are as follows:

14 (1) Retail dealers shall be divided into two classes: Class A and Class B.

15 (A) For a Class A retail dealer, the license fee is \$150 for each place of business; the
16 license fee for social, fraternal or private clubs not operating for profit, and having been in
17 continuous operation for two years or more immediately preceding the date of application, is \$150:
18 *Provided*, That railroads operating in this state may dispense nonintoxicating beer upon payment
19 of an annual license tax of \$10 for each dining, club or buffet car in which the beer is dispensed.

20 Class A licenses issued for railroad dining, club or buffet cars authorize the licensee to
21 sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All
22 other Class A licenses authorize the licensee to sell nonintoxicating beer at retail for consumption
23 on or off the licensed premises.

24 (B) For a Class B retail dealer, the license fee, authorizing the sale of both chilled and
25 unchilled beer, is \$150 for each place of business. A Class B license authorizes the licensee to
26 sell nonintoxicating beer at retail in bottles, cans or other sealed containers only, and only for
27 consumption off the licensed premises. A Class B retailer may sell to a patron, for personal use
28 and not for resale, quantities of draught beer in original containers that are no larger in size than
29 one-half barrel for off-premises consumption.

30 A Class B license may be issued only to the proprietor or owner of a grocery store. For
31 the purpose of this article, the term "grocery store" means any retail establishment commonly
32 known as a grocery store or delicatessen, and caterer or party supply store, where food or food
33 products are sold for consumption off the premises, and includes a separate and segregated
34 portion of any other retail store which is dedicated solely to the sale of food, food products and
35 supplies for the table for consumption off the premises. Caterers or party supply stores are
36 required to purchase the appropriate licenses from the Alcohol Beverage Control Administration.

37 (2) For a distributor, the license fee is \$1,000 for each place of business.

38 (3) For a brewer or a resident brewer with its principal place of business or manufacture
39 located in this state and who produces:

40 (A) Twelve thousand five hundred barrels or less of nonintoxicating beer or nonintoxicating
41 craft beer, the license fee is \$500 for each place of manufacture;

42 (B) Twelve thousand five hundred one barrels and up to 25,000 barrels of nonintoxicating
43 beer or nonintoxicating craft beer, the license fee is \$1,000 for each place of manufacture;

44 (C) More than 25,001 barrels of nonintoxicating beer or nonintoxicating craft beer, the
45 license fee is \$1,500 for each place of manufacture.

46 (4) For a brewer whose principal place of business or manufacture is not located in this
47 state, the license fee is \$1,500. The brewer is exempt from the requirements set out in subsections
48 (c), (d) and (e) of this section: *Provided*, That a brewer whose principal place of business or
49 manufacture is not located in this state that produces less than 25,000 barrels of nonintoxicating
50 beer or nonintoxicating craft beer may choose to apply, in writing, to the commissioner to be
51 subject to the variable license fees of subdivision (3), subsection (b) of this section and the
52 requirements set out in subsections (c), (d) and (e) of this section subject to investigation and
53 approval by the commissioner as to brewer requirements.

54 (5) For a brewpub, the license fee is \$500 for each place of manufacture.

55 (c) As part of the application or renewal application and in order to determine a brewer or
56 resident brewer's license fee pursuant to this section, a brewer or resident brewer shall provide
57 the commissioner, on a form provided by the commissioner, with an estimate of the number of
58 nonintoxicating beer or nonintoxicating craft beer barrels and gallons it will produce during the
59 year based upon the production capacity of the brewer's or resident brewer's manufacturing
60 facilities, and the prior year's production and sales volume of nonintoxicating beer or
61 nonintoxicating craft beer.

62 (d) On or before July 15 of each year, every brewer or resident brewer who is granted a
63 license shall file a final report, on a form provided by the commissioner, that is dated as of June

64 30 of each year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in
65 barrels and gallons produced at its principal place of business and manufacture during the prior
66 year.

67 (e) If the actual total production of nonintoxicating beer or nonintoxicating craft beer by the
68 brewer or resident brewer exceeded the brewer's or resident brewer's estimate that was filed with
69 the application or renewal for a brewer's or resident brewer's license for that period, then the
70 brewer or resident brewer shall include a remittance for the balance of the license fee pursuant
71 to this section that would be required for the final, higher level of production.

72 (f) Any brewer or resident brewer failing to file the reports required in subsections (c) and
73 (d) of this section, and who is not exempt from the reporting requirements, shall, at the discretion
74 of the commissioner, be subject to the penalties set forth in §11-16-23 of this code.

75 (g) Notwithstanding subsections (a) and (b) of this section, the license fee per event for a
76 nonintoxicating beer floor plan extension is \$100, and the fee may not be prorated or refunded,
77 and must be accompanied with a license application, certification that the event meets certain
78 requirements in the code and rules, and such other information as the commissioner may
79 reasonably require, at least 15 days prior to the event, all as determined by the commissioner.

80 (h) Any brewer, resident brewer, distributor or any person transporting nonintoxicating
81 beer or nonintoxicating craft beer for resale, and not for personal use, in or through this state on
82 behalf of such licensees, or by contract or other means, all of whom are operating in this state
83 may only transport nonintoxicating beer or nonintoxicating craft beer available for resale, and not
84 personal use, in or through this state upon payment of an annual license tax of \$10 for each first
85 vehicle licensed, and a \$1 annual license tax for every vehicle licensed thereafter. The vehicles
86 shall be issued a nonintoxicating beer transportation permit. Transporting nonintoxicating beer or
87 nonintoxicating craft beer for resale, and not for personal use, in or through this state without a
88 nonintoxicating beer transportation permit is in violation of law and the penalties prescribed under
89 §11-16-18 and §11-16-23 of this code are applicable for any violation.

§11-16-10. Brewer's license for foreign corporation; application; bond; contents of application; limitations; licensed representatives for brewers, resident brewers and distributors; annual license fee; renewal; suspension; license fee for sales representatives.

1 (a) A brewer's license shall be issued by the commissioner to a foreign corporation which
2 submits an application therefor accompanied by the license fee hereinafter prescribed, ~~the bond~~
3 ~~required by section nine of this article~~ a certified copy of the certificate of authority issued by the
4 Secretary of State authorizing such foreign corporation to transact business in the state and a
5 certified copy of its most recent corporation charter. Such application shall be verified and shall
6 state:

- 7 (1) The name of the corporation and the state under the laws of which it is incorporated;
8 (2) The date of incorporation;
9 (3) The address of the principal office of the corporation;
10 (4) The names and respective addresses of the directors and officers of the corporation;
11 (5) The date that such foreign corporation qualified to transact business in this state; and
12 (6) Such other information as the commissioner, by rule or regulation, may require.

13 (b) So long as the foreign corporation remains qualified to transact business in this state
14 so that the Secretary of State can accept service of notice and process for such foreign
15 corporation, then, notwithstanding any other provision of this article to the contrary, none of the
16 officers and directors of such foreign corporation need be residents of this state.

17 (c) The license fee for a brewer's license for a foreign corporation selling any
18 nonintoxicating beer product within this state, whether or not its principal place of business be
19 located in this state, shall be \$1,500 per annum. The license period shall begin on July 1, of each
20 year and end on June 30 of the following year, and if granted for a lesser period, the same shall
21 be prorated semiannually in proportion to the remainder of the fiscal year.

22 (d) All ~~sales~~ representatives ~~for~~ engaged in the selling, taking orders, marketing,
23 merchandising or conducting other sales or ordering representation before retailers on behalf of
24 any brewer, ~~or manufacturer~~ resident brewer or distributor of nonintoxicating beer shall be issued
25 a ~~permit~~ license by the commissioner. The ~~permit~~ nonrefundable and nonprorated license fee for
26 each ~~sales~~ such representative of or employed by a licensed brewer, ~~or manufacturer~~ resident
27 brewer or distributor shall be ~~\$50~~ \$100. Such person can be given probation, fined, suspended
28 or revoked as specified in §11-16-23 of this code for violations of this article and the rules. It is a
29 violation of the code and rules to operate without such license and is punishable by the penalties
30 available under this article.

31 (e) The licenses ~~and permits~~ issued under the provisions of this section shall be renewed
32 annually upon application for renewal on a form prescribed by the commissioner and payment of
33 the annual license fee.

34 (f) If at any time such foreign corporation is no longer qualified to transact business in this
35 state, the Secretary of State shall notify the commissioner of such fact and the commissioner shall
36 thereupon suspend the brewer's license issued to such foreign corporation until such time as such
37 foreign corporation has again qualified to transact business in this state and has otherwise
38 complied with the provisions of this section.

39 (g) Notwithstanding any other provision of this article to the contrary, any corporation
40 issued a brewer's license under the provisions of this article shall not engage in the business of
41 a distributor or retailer as defined in this article.

**§11-16-12. When bond not required; bond of brewer, distributor and a Class A retail dealer;
action on bond of retail dealer upon revocation of license; duty of prosecuting
attorney.**

1 (a) ~~In addition to furnishing the information required by this article, each brewer or~~
2 ~~distributor applying for a license under this article shall furnish, as prerequisite to a license, a bond~~
3 ~~with some solvent surety company as surety, to be approved by the commissioner, payable to~~

4 ~~the state of West Virginia, conditioned for the payment of any and all additional taxes accruing~~
5 ~~during the period of such license, and conditioned further for the faithful observance of the~~
6 ~~provisions of this article, the rules, regulations and orders promulgated pursuant thereto and of~~
7 ~~any other laws of the state of West Virginia generally relating to the sale, transportation, storage~~
8 ~~and distribution of nonintoxicating beer, which said bonds shall be forfeited to the state upon the~~
9 ~~revocation of the license of any such brewer or distributor. The amount of such bond in the case~~
10 ~~of a resident brewer or brewpub shall be not less than \$5,000 nor more than \$10,000 and in the~~
11 ~~case of a distributor, not less than \$2,000 nor more than \$5,000 for each place of business~~
12 ~~licensed and conducted within the state, the amount of such bond, between the minimum and~~
13 ~~maximum amounts, to be determined in the discretion of the commissioner. There shall be no~~
14 ~~bond for a brewer, resident brewer, distributor, Class S or brewpub license, as the license privilege~~
15 ~~itself secures the payment of taxes and is subject to suspension and revocation for failure to pay~~
16 ~~said taxes. In the case of brewers shipping nonintoxicating beer into the state, any brewer must~~
17 ~~also furnish a bond in a penalty of not less than \$5,000 nor more than \$25,000 conditioned as~~
18 ~~hereinabove in this subsection provided and any bond furnished pursuant hereto shall be forfeited~~
19 ~~to the state in the full amount of said bond upon revocation of license of any such brewer or~~
20 ~~distributor. Such money received by the state shall be credited to the State Fund, General~~
21 ~~Revenue~~

22 (b) Each Class A retail dealer, in addition to furnishing the information required by this
23 article, shall furnish, as prerequisite to obtaining a license, a bond with some solvent surety
24 company as surety, to be approved by the commissioner, payable to the State of West Virginia,
25 in the amount not less than \$500 nor more than \$1000 within the discretion of the commissioner.
26 All such bonds shall be conditioned for the faithful observance of the provisions of this article, the
27 rules, regulations and orders promulgated pursuant thereto and of any other laws of the State of
28 West Virginia generally relating to the distribution, sale and dispensing of nonintoxicating beer
29 and shall be forfeited to the state in the full amount of said bond upon the revocation of the license

30 of any such retail dealer. Such money received by the state shall be credited to the State Fund,
31 General Revenue.

32 (c) Upon the revocation of the license of any Class A retail dealer by the commissioner or
33 by any court of competent jurisdiction, the commissioner or the clerk of said court shall notify the
34 prosecuting attorney of the county wherein such retail dealer's place of business is located, or the
35 prosecuting attorney of the county wherein the licensee resides, of such revocation, and, upon
36 receipt of said notice, it shall be the duty of such prosecuting attorney forthwith to institute
37 appropriate proceedings for the collection of the full amount of said bond. Upon request of such
38 prosecuting attorney, the commissioner shall deliver the bond to him. Willful refusal without just
39 cause therefor by the prosecuting attorney to perform said duty hereby imposed shall subject him
40 or her to removal from office by the circuit court of the county for which said prosecuting attorney
41 was elected upon proper proceedings and proof in the manner provided by law.

§11-16-17a. Commissioner to investigate, review and approve or deny franchise agreements, labels, brands and line extensions.

1 (a) The commissioner shall investigate and review:

2 (1) All franchise agreements and any amendments to a franchise agreement to verify
3 compliance with this article and the promulgated rules.

4 (2) The registration of all container labels for brands manufactured, imported or sold in
5 West Virginia.

6 (3) The registration of all brands and line extensions with the commissioner that are the
7 subject of a franchise agreement or an amendment to a franchise agreement.

8 (4) The appointment of all brands or line extensions to a distributor in a brewer's
9 established franchise distributor network and to that distributor's assigned territory from the
10 brewer.

11 (5) The appointment of all brands or line extensions acquired by a brewer as either an
12 acquiring brewer, successor brewer and also any successor entities of a brewer, as specified in

13 §11-16-21(a)(3) of this code, to the distributor in the selling brewer's established franchise
14 distributor network and to that distributor's assigned territory.

15 (b) The commissioner's investigation and review under subsection (a) of this section may
16 include, but is not limited to: the brewer, its subsidiaries, parent entities, contracted entities,
17 affiliated entities, associated entities or any other related entities, the brewer's corporate structure,
18 the nature of the relatedness of various entities, ownership, trade names or partial trade names,
19 logos, copyrights, trademarks or trade design, product codes, marketing and advertising,
20 promotion or pricing.

21 (c) Every brewer or resident brewer offering nonintoxicating beer or nonintoxicating craft
22 beer for sale under this article shall register with the commissioner each nonintoxicating beer or
23 nonintoxicating craft beer container label, as specified in subdivision (a), offered and available for
24 sale in the state and shall pay a fee of \$60 for the registration of such nonintoxicating beer or
25 nonintoxicating craft beer container label for three years. No nonintoxicating beer or
26 nonintoxicating craft beer brand may be sold under this article unless all of such nonintoxicating
27 beer or nonintoxicating craft beer brand's container labels for the product intended for sale in the
28 state have been registered, fees paid and reviewed by the commissioner. Every brewer or
29 resident brewer offering various container labels of a registered and reviewed nonintoxicating
30 beer or nonintoxicating craft beer brand for sale in the state shall submit all of the nonintoxicating
31 beer or nonintoxicating craft beer brand's container labels for registration prior to the sale of such
32 nonintoxicating beer or nonintoxicating craft beer in the state. After the expiration of three years,
33 the brewer or resident brewer may renew the registered container labels by paying a \$60 renewal
34 fee for three more years and every three years thereafter. Prior to registration of any
35 nonintoxicating beer or nonintoxicating craft beer container labels, the commissioner shall review
36 the nonintoxicating beer or nonintoxicating craft beer container labels. This review shall include,
37 but not be limited to, a review of the alcohol content, corporate or product information, marketing
38 and advertising so that the nonintoxicating beer or nonintoxicating craft beer container label is not

39 intended to be marketed to persons less than 21 years of age. The commissioner shall remove
40 all nonrenewed nonintoxicating beer or nonintoxicating craft beer container labels and any
41 licensee who sells nonintoxicating beer or nonintoxicating craft beer with nonrenewed container
42 labels shall be subject to the penalties under §11-16-23 of this code. Failure to register, obtain
43 review, certification and pay the registration fee for a nonintoxicating beer or nonintoxicating craft
44 beer container label and failure to register such labels will subject the brewer or resident brewer
45 to penalties under said section.

46 ~~(e)~~ (d) The commissioner may approve or deny any item listed in subsection (a) of this
47 section as determined by the commissioner in accordance with this article, the promulgated rules
48 as the facts and circumstances dictate.

49 ~~(d)~~ (e) Any brewer adversely affected by a denial as specified in subdivision (3) or (4),
50 subsection (a) of this section, may request, in writing, a final written determination from the
51 commissioner.

52 ~~(e)~~ (f) Upon receipt of final determination as provided in subsection ~~(d)~~ (e) of this section,
53 a brewer may request an administrative hearing by filing a written petition and as otherwise
54 required per §11-16-24 of this code and the rules promulgated by the commissioner. Upon filing
55 a written petition, the brewer shall file a \$1,000 hearing deposit, via certified check or money
56 order, to cover the costs of the hearing. Such certified check or money order shall be made
57 payable to the commissioner. In any such hearing held by the request of a brewer, the burden of
58 proof is on the brewer and the standard of review for the administrative hearing is by a
59 preponderance of the evidence.

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