

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2394

BY DELEGATES FLEISCHAUER AND FAST

[Introduced January 14, 2019; Referred
to the Committee on Banking and Insurance then the
Judiciary.]

1 A BILL to amend and reenact §11-16-8 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §60-7-4 of said code, all relating to requiring licensees authorized to
3 serve alcoholic liquors or nonintoxicating beer to have certain liability insurance coverage
4 to cover the premises of the licensee; establishing statutory minimum level of insurance
5 coverage; and directing the Alcoholic Beverage Control Commissioner, upon a finding that
6 either statutory minimum insurance coverage is inadequate, to increase statutory
7 minimum coverage amounts by legislative rule.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§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
47 300 feet of a school or church measured from front door to front door, along the street or streets.
48 This requirement does not apply to a Class B license or to a place occupied by a beer licensee
49 so long as it is continuously so occupied. The prohibition against locating a proposed business in
50 a place or building within 300 feet of a school does not apply to a college or university that has
51 notified the commissioner, in writing, that it has no objection to the location of a proposed business
52 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 peculiarly interested in the business
56 so asked to be licensed and that no other person is in any manner peculiarly interested during
57 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; and

60 (9) That the applicant has general liability insurance coverage of not less than \$100,000
61 per occurrence and liquor liability insurance coverage of not less than \$100,000 per occurrence,
62 to cover liabilities arising out of a licensee's general business operations. The applicant shall
63 submit proof of coverage from each insurance coverage provider. The commissioner, upon a
64 finding that the insurance coverage is inadequate to cover claims made against either type of
65 policy, shall, by legislative rule, increase the minimum amounts of insurance coverage for all
66 applicants.

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

74 (c) The provisions and requirements of subsection (a) of this section are mandatory
75 prerequisites for the issuance and if any applicant fails to qualify, the license shall be refused. In
76 addition to the information furnished in any application, the commissioner may make such
77 additional and independent investigation of each applicant and of the place to be occupied as
78 necessary or advisable and, for this reason, all applications, with license fee and bond, must be
79 filed 30 days prior to the beginning of any fiscal year. If the application is for an unexpired portion
80 of a fiscal year, the issuance of license may be withheld for such reasonable time as necessary
81 for investigation.

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

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

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

92 (3) That the license should not be issued for reason of conduct declared to be unlawful by

93 this article.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-4. Application for license; information required; verification; application to be accompanied by fees; bond; college fraternities and sororities ineligible for license; racial discrimination by applicants prohibited.

1 (a) Application for a license to operate a private club shall be made on such form as may
2 be prescribed by the commissioner and shall include:

3 (1) The name of the applicant;

4 (2) If the applicant is an unincorporated association, the names and addresses of the
5 members of its governing board;

6 (3) If the applicant is a corporation, the names and addresses of its officers and directors;

7 (4) The place at which the applicant will conduct its operations and whether the same is
8 owned or leased by the applicant;

9 (5) The number of members of the applicant;

10 (6) The name or names of any national organizations with which applicant is affiliated and
11 the nature of such affiliation;

12 (7) The size and nature of the dining and kitchen facilities operated by applicant; ~~and~~

13 (8) Such other information as the commissioner may reasonably require which shall
14 include, but not be limited to, the criminal records, if any, of each member of the applicant's
15 governing board and/or its officers and directors who have been convicted of a felony or a crime
16 involving moral turpitude; and

17 (9) That the applicant has general liability insurance coverage of not less than \$100,000
18 per occurrence and nonintoxicating beer liability or liquor insurance coverage of not less than
19 \$100,000 per occurrence, to cover liabilities arising out of a licensee's general business

20 operations. The applicant shall submit proof of coverage from each insurance coverage provider.
21 The commissioner, upon a finding that the liability insurance coverage is inadequate to cover
22 claims made against either type of policy, shall, by legislative rule, increase the minimum amounts
23 of insurance coverage for all applicants.

24 (b) The application shall be verified by each member of the governing board of the
25 applicant if an unincorporated association or, if the applicant is a corporation, by each of its officers
26 and all members of its board of directors. The application shall be accompanied by the license
27 fee hereinafter prescribed and by a bond of the applicant in the penal sum of \$5,000 with a
28 corporate surety authorized to transact business in the State of West Virginia, payable to the State
29 of West Virginia, which bond shall be conditioned on the payment of all fees herein prescribed
30 and on the faithful performance of and compliance with the provisions of this article.

31 (c) Under no circumstance may any college fraternity or sorority be issued a license to
32 operate a private club.

33 (d) No license to operate a private club ~~will~~ may be issued to applicants who discriminate
34 against any person or group of persons because of race or color of such person or group of
35 persons.

NOTE: The purpose of this bill is to require licensees authorized to serve alcoholic liquors or nonintoxicating beer to have certain liability insurance coverage to cover the premises of the licensee. The bill establishes a statutory minimum level of insurance coverage. The bill directs the Alcoholic Beverage Control Commissioner, upon a finding that either statutory minimum insurance coverage is inadequate, to increase statutory minimum coverage amounts by legislative rule.

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