

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 649**

4 (By Senators Kessler (Mr. President), Browning, Edgell, Klempa  
5 and Beach)

6 \_\_\_\_\_  
7 [Originating in the Committee on the Judiciary;  
8 reported February 24, 2012.]  
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13 A BILL to amend and reenact §11-16-3 and §11-16-8 of the Code of  
14 West Virginia, 1931, as amended, all relating to the  
15 Nonintoxicating Beer Act; adding a limited liability company  
16 to the definition of "person" under the act; allowing a trust  
17 to be an applicant for a distributor license; and requiring  
18 certain disclosures by applicants for distributor licenses  
19 that are trusts or limited liability companies.

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

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

23 **ARTICLE 16. NONINTOXICATING BEER.**

24 **§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, brewing,  
5 mixing, concocting, blending, bottling or otherwise producing or  
6 importing or transshipping from a foreign country nonintoxicating  
7 beer for sale at wholesale to any licensed distributor.

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

12 (3) "Commissioner" means the West Virginia Alcohol Beverage  
13 Control Commissioner.

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

1 notwithstanding the liability of trustees in article ten, chapter  
2 forty-four-d of this code.

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

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

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

22 (8) "Person" means and includes an individual, firm,  
23 partnership, limited partnership, limited liability company,  
24 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,  
24 limited partnership, ~~association or corporation~~ limited liability

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

24 (2) The place of birth of applicant, that he or she is a

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

1 retailer's license including the requirement as to residence;

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

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

7 (5) That the place or building in which is proposed to do  
8 business conforms to all applicable laws of health, fire and zoning  
9 regulations ~~applicable thereto~~, and is a safe and proper place or  
10 building ~~and is~~ not within three hundred feet of ~~any~~ a school or  
11 church measured from front door to front door, along the street or  
12 streets. ~~Provided, That~~ This requirement ~~shall~~ does not apply to  
13 a Class B license or to ~~any~~ a place ~~now~~ occupied by a beer licensee  
14 so long as it is continuously so occupied. ~~Provided, however, That~~  
15 The prohibition against locating ~~any such~~ a proposed business in a  
16 place or building within three hundred feet of ~~any~~ a school ~~shall~~  
17 does not apply to ~~any~~ a college or university that has notified the  
18 commissioner, in writing, that it has no objection to the location  
19 of ~~any such~~ a proposed business in a place or building within three  
20 hundred feet of such college or university;

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

24 (7) That the applicant is the only person in any manner

1 pecuniarily interested in the business so asked to be licensed and  
2 that no other person ~~shall be~~ is in any manner pecuniarily  
3 interested ~~therein~~ during the continuance of the license; and

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

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

19 (c) The commissioner may refuse a license to any applicant  
20 under the provisions of this article if the commissioner ~~shall be~~  
21 is of the opinion:

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

24 (2) That the place to be occupied by the applicant is not a



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

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

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(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.)