

Adopted by House 4-12-2013

SB172 HFIN AM 4-10

The Committee on Finance moves to amend the bill on page one, following the enacting section, by striking out the remainder of the bill and inserting in lieu thereof, the following language:

1 **"ARTICLE 16. NONINTOXICATING BEER.**

2 **§11-16-3. Definitions.**

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

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

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

17 (3) "Class A retail license" means a retail license permitting
18 the retail sale of liquor at a freestanding liquor retail outlet
19 licensed pursuant to chapter sixty of this code.

1 (4) "Commissioner" means the West Virginia Alcohol Beverage
2 Control Commissioner.

3 (5) "Distributor" means and includes any person jobbing or
4 distributing nonintoxicating beer or nonintoxicating craft beer to
5 retailers at wholesale and whose warehouse and chief place of
6 business shall be within this state. For purposes of a distributor
7 only, the term "person" means and includes an individual, firm,
8 trust, partnership, limited partnership, limited liability company,
9 association or corporation. Any trust licensed as a distributor or
10 any trust that is an owner of a distributor licensee, and the
11 trustee or other persons in active control of the activities of the
12 trust relating to the distributor license, is liable for acts of
13 the trust or its beneficiaries relating to the distributor license
14 that are unlawful acts or violations of article eleven of this
15 chapter notwithstanding the liability of trustees in article ten,
16 chapter forty-four-d of this code.

17 (6) "Freestanding liquor retail outlet" means a retail outlet
18 that sells only liquor, beer, nonintoxicating beer and other
19 alcohol-related products, as defined pursuant to section four,
20 article three-a, chapter sixty of this code.

21 (7) "Growler" means a glass container or jug, capable of
22 being securely sealed, utilized by a brewpub for purposes of off-
23 premise sales of nonintoxicating beer or nonintoxicating craft beer
24 for personal consumption not on a licensed premise and not for

1 resale.

2 ~~(7)~~ (8) "Nonintoxicating beer" means all natural cereal malt
3 beverages or products of the brewing industry commonly referred to
4 as beer, lager beer, ale and all other mixtures and preparations
5 produced by the brewing industry, including malt coolers and
6 nonintoxicating craft beers with no caffeine infusion or any
7 additives masking or altering the alcohol effect containing at
8 least one half of one percent alcohol by volume, but not more than
9 nine and six-tenths of alcohol by weight, or twelve percent by
10 volume, whichever is greater. ~~all of which are hereby declared to~~
11 ~~be nonintoxicating and~~ The word "liquor" as used in chapter sixty
12 of this code ~~shall not be construed to~~ does not include or embrace
13 nonintoxicating beer nor any of the beverages, products, mixtures
14 or preparations included within this definition.

15 ~~(8)~~ (9) "Nonintoxicating beer sampling event" means an event
16 approved by the commissioner for a Class A retail Licensee to hold
17 a nonintoxicating beer sampling authorized pursuant to section
18 eleven-a of this article.

19 ~~(9)~~ (10) "Nonintoxicating beer sampling day" means any days
20 and hours of the week where Class A retail licensees may sell
21 nonintoxicating beer pursuant to sub-section (a)(1), section
22 eighteen of this article, and is approved, in writing, by the
23 commissioner to conduct a nonintoxicating beer sampling event.

24 ~~(10)~~ (11) "Nonintoxicating craft beer" means any beverage

1 obtained by the natural fermentation of barley, malt, hops or any
2 other similar product or substitute and containing not less than
3 one half of one percent by volume and not more than twelve percent
4 alcohol by volume or nine and six-tenths percent alcohol by weight
5 with no caffeine infusion or any additives masking or altering the
6 alcohol effect.

7 ~~(11)~~ (12) "Original container" means the container used by the
8 brewer at the place of manufacturing, bottling or otherwise
9 producing nonintoxicating beer for sale at wholesale.

10 ~~(12)~~ (13) "Person" means and includes an individual, firm,
11 partnership, limited partnership, limited liability company,
12 association or corporation.

13 ~~(13)~~ (14) "Resident brewer" means any ~~person, firm,~~
14 ~~association, partnership, or corporation~~ brewer or manufacturer of
15 not more than 10,000 gallons annually per year of nonintoxicating
16 beer or nonintoxicating craft beer whose principal place of
17 business and manufacture is located within the State of West
18 Virginia.

19 ~~(14)~~ (15) "Retailer" means any person selling, serving, or
20 otherwise dispensing nonintoxicating beer and all products
21 regulated by this article, including, but not limited to, ~~any malt~~
22 ~~cooler,~~ malt coolers at his or her established and licensed place
23 of business.

24 ~~(15)~~ (16) "Tax Commissioner" means the Tax Commissioner of the

1 State of West Virginia or the commissioner's designee.

2 **§11-16-8. Form of application for license; fee and bond; refusal**
3 **of license.**

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

7 (1) The name and residence of the applicant, the duration of
8 such residency, that the applicant has been a resident of the state
9 for a period of two years ~~next~~ preceding the date of the
10 application and that the applicant is twenty-one years of age. If
11 the applicant is a firm, association, partnership, limited
12 partnership, limited liability company or corporation, the
13 application shall include the residence of the members or officers
14 for a period of two years ~~next~~ preceding the date of such
15 application. ~~Provided, That if any~~ If a person, firm, partnership,
16 limited partnership, ~~association or corporation~~ limited liability
17 company, association, corporation or trust applies for a license as
18 a distributor, such person, or in the case of a firm, partnership,
19 limited partnership, ~~or association, the members or officers~~
20 ~~thereof~~ limited liability company, association or trust, the
21 members, officers, trustees or other persons in active control of
22 the activities of the limited liability company, association or
23 trust relating to the license, shall state under oath that each has
24 been a bona fide resident of the state for four years preceding the

1 date of such application. If the applicant is a trust or has a
2 trust as an owner, the trustees or other persons in active control
3 of the activities of the trust relating to the license shall
4 provide a certification of trust as described in section one-
5 thousand-thirteen, article ten, chapter forty-four-d of this code.
6 This certification of trust shall include the excerpts described in
7 subsection (e), section one-thousand-thirteen, article ten, chapter
8 forty-four-d of this code and shall further state, under oath, the
9 names, addresses, Social Security numbers and birth dates of the
10 beneficiaries of the trust and certify that the trustee and
11 beneficiaries are twenty-one years of age or older. If a
12 beneficiary is not twenty-one years of age, the certification of
13 trust must state that such beneficiary's interest in the trust is
14 represented by a trustee, parent or legal guardian who is twenty-
15 one years of age and who will direct all actions on behalf of such
16 beneficiary related to the trust with respect to the distributor
17 until the beneficiary is twenty-one years of age. Any beneficiary
18 who is not twenty-one years of age or older shall have his or her
19 trustee, parent or legal guardian include in the certification of
20 trust and state under oath his or her name, address, Social
21 Security number and birth date.

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

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

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

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

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

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

23 (7) That the applicant is the only person in any manner
24 pecuniarily interested in the business so asked to be licensed and

1 that no other person ~~shall be~~ is in any manner pecuniarily
2 interested ~~therein~~ during the continuance of the license; and

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

6 (b) In the case of an applicant that is trust or has a trust
7 as an owner, a distributor license may be issued only upon
8 submission by the trustees or other persons in active control of
9 the activities of the trust relating to the distributor license of
10 a true and correct copy of the written trust instrument to the
11 commissioner for his or her review. Notwithstanding any provision
12 of law to the contrary, the copy of the written trust instrument
13 submitted to the commissioner pursuant to this section is
14 confidential and is not a public record and is not available for
15 release pursuant to the West Virginia Freedom of Information Act
16 codified in chapter twenty-nine-b, article one of this code.

17 (c) The provisions and requirements of subsection (a) of this
18 section are mandatory prerequisites for the issuance, and ~~in the~~
19 ~~event if~~ any applicant fails to qualify ~~under the same~~, the license
20 shall be refused. In addition to the information furnished in any
21 application, the commissioner may make such additional and
22 independent investigation of each applicant and of the place to be
23 occupied as ~~deemed~~ necessary or advisable and, for this reason,
24 ~~each and~~ all applications, with license fee and bond, must be filed

1 thirty days prior to the beginning of any fiscal year. ~~and~~ If the
2 application is for an unexpired portion of ~~any~~ a fiscal year, the
3 issuance of license may be withheld for such reasonable time as
4 necessary for investigation.

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

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

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

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