

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 172**

5 (SENATOR KESSLER (MR. PRESIDENT), *original sponsor*)

6 \_\_\_\_\_  
7 [Passed April 13, 2013; in effect ninety days from passage.]  
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11 AN ACT to amend and reenact §11-16-3 and §11-16-8 of the Code of  
12 West Virginia, 1931, as amended, all relating to the  
13 Nonintoxicating Beer Act generally; defining terms; expanding  
14 the definition of "person" for purposes of holding a  
15 nonintoxicating beer distributorship; allowing trusts, limited  
16 liability companies and associations to hold a distributor's  
17 license; and requiring certain disclosures by applicants that  
18 are trusts, limited liability companies or associations.

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

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

22 **ARTICLE 16. NONINTOXICATING BEER.**

23 **§11-16-3. Definitions.**

24 For the purpose of this article, except where the context

1 clearly requires differently:

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

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

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

17       (4) "Commissioner" means the West Virginia Alcohol Beverage  
18 Control Commissioner.

19       (5) "Distributor" means and includes any person jobbing or  
20 distributing nonintoxicating beer or nonintoxicating craft beer to  
21 retailers at wholesale and whose warehouse and chief place of  
22 business shall be within this state. For purposes of a distributor  
23 only, the term "person" means and includes an individual, firm,  
24 trust, partnership, limited partnership, limited liability company,

1 association or corporation. Any trust licensed as a distributor or  
2 any trust that is an owner of a distributor licensee, and the  
3 trustee or other persons in active control of the activities of the  
4 trust relating to the distributor license, is liable for acts of  
5 the trust or its beneficiaries relating to the distributor license  
6 that are unlawful acts or violations of article eleven of this  
7 chapter notwithstanding the liability of trustees in article ten,  
8 chapter forty-four-d of this code.

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

13       (7) "Growler" means a glass ceramic or metal container or jug,  
14 capable of being securely sealed, utilized by a brewpub for  
15 purposes of off-premise sales of nonintoxicating beer or  
16 nonintoxicating craft beer for personal consumption not on a  
17 licensed premise and not for resale.

18       (8) "Nonintoxicating beer" means all natural cereal malt  
19 beverages or products of the brewing industry commonly referred to  
20 as beer, lager beer, ale and all other mixtures and preparations  
21 produced by the brewing industry, including malt coolers and  
22 nonintoxicating craft beers with no caffeine infusion or any  
23 additives masking or altering the alcohol effect containing at  
24 least one half of one percent alcohol by volume, but not more than

1 nine and six-tenths of alcohol by weight, or twelve percent by  
2 volume, whichever is greater. The word "liquor" as used in chapter  
3 sixty of this code does not include or embrace nonintoxicating beer  
4 nor any of the beverages, products, mixtures or preparations  
5 included within this definition.

6 (9) "Nonintoxicating beer sampling event" means an event  
7 approved by the commissioner for a Class A retail licensee to hold  
8 a nonintoxicating beer sampling authorized pursuant to section  
9 eleven-a of this article.

10 (10) "Nonintoxicating beer sampling day" means any days and  
11 hours of the week where Class A retail licensees may sell  
12 nonintoxicating beer pursuant to subdivision (1), subsection (a),  
13 section eighteen of this article and is approved, in writing, by  
14 the commissioner to conduct a nonintoxicating beer sampling event.

15 (11) "Nonintoxicating craft beer" means any beverage obtained  
16 by the natural fermentation of barley, malt, hops or any other  
17 similar product or substitute and containing not less than one half  
18 of one percent by volume and not more than twelve percent alcohol  
19 by volume or nine and six-tenths percent alcohol by weight with no  
20 caffeine infusion or any additives masking or altering the alcohol  
21 effect.

22 (12) "Original container" means the container used by the  
23 brewer at the place of manufacturing, bottling or otherwise  
24 producing nonintoxicating beer for sale at wholesale.

1 (13) "Person" means and includes an individual, firm,  
2 partnership, limited partnership, limited liability company,  
3 association or corporation.

4 (14) "Resident brewer" means any brewer or manufacturer of  
5 nonintoxicating beer or nonintoxicating craft beer whose principal  
6 place of business and manufacture is located in the State of West  
7 Virginia and which does not brew or manufacture more than twenty-  
8 five thousand barrels of non-intoxicating beer or nonintoxicating  
9 craft beer annually, and does not self-distribute more than ten  
10 thousand barrels thereof in the State of West Virginia annually.

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

15 (16) "Tax Commissioner" means the Tax Commissioner of the  
16 State of West Virginia or the commissioner's designee.

17 **§11-16-8. Form of application for license; fee and bond; refusal**  
18 **of license.**

19 (a) A license may be issued by the commissioner to any person  
20 who submits an application, accompanied by a license fee and, where  
21 required, a bond, and states under oath:

22 (1) The name and residence of the applicant, the duration of  
23 such residency, that the applicant has been a resident of the state  
24 for a period of two years preceding the date of the application and

1 that the applicant is twenty-one years of age. If the applicant is  
2 a firm, association, partnership, limited partnership, limited  
3 liability company or corporation, the application shall include the  
4 residence of the members or officers for a period of two years  
5 preceding the date of such application. If a person, firm,  
6 partnership, limited partnership, limited liability company,  
7 association, corporation or trust applies for a license as a  
8 distributor, such person, or in the case of a firm, partnership,  
9 limited partnership, limited liability company, association or  
10 trust, the members, officers, trustees or other persons in active  
11 control of the activities of the limited liability company,  
12 association or trust relating to the license, shall state under  
13 oath that each has been a bona fide resident of the state for four  
14 years preceding the date of such application. If the applicant is  
15 a trust or has a trust as an owner, the trustees or other persons  
16 in active control of the activities of the trust relating to the  
17 license shall provide a certification of trust as described in  
18 section one thousand thirteen, article ten, chapter forty-four-d of  
19 this code. This certification of trust shall include the excerpts  
20 described in subsection (e), section one thousand thirteen, article  
21 ten, chapter forty-four-d of this code and shall further state,  
22 under oath, the names, addresses, Social Security numbers and birth  
23 dates of the beneficiaries of the trust and certify that the  
24 trustee and beneficiaries are twenty-one years of age or older. If

1 a beneficiary is not twenty-one years of age, the certification of  
2 trust must state that such beneficiary's interest in the trust is  
3 represented by a trustee, parent or legal guardian who is twenty-  
4 one years of age and who will direct all actions on behalf of such  
5 beneficiary related to the trust with respect to the distributor  
6 until the beneficiary is twenty-one years of age. Any beneficiary  
7 who is not twenty-one years of age or older shall have his or her  
8 trustee, parent or legal guardian include in the certification of  
9 trust and state under oath his or her name, address, Social  
10 Security number and birth date.

11 (2) The place of birth of applicant, that he or she is a  
12 citizen of the United States and of good moral character and, if a  
13 naturalized citizen, when and where naturalized. If the applicant  
14 is a corporation organized or authorized to do business under the  
15 laws of the state, the application must state when and where  
16 incorporated, the name and address of each officer and that each  
17 officer is a citizen of the United States and a person of good  
18 moral character. If the applicant is a firm, association, limited  
19 liability company, partnership, limited partnership, trust or has  
20 a trust as an owner, the application shall provide the place of  
21 birth of each member of the firm, association, limited liability  
22 company, partnership or limited partnership and of the trustees,  
23 beneficiaries or other persons in active control of the activities  
24 of the trust relating to the license and that each member or

1 trustee, beneficiary or other persons in active control of the  
2 activities of the trust relating to the license is a citizen of the  
3 United States and if a naturalized citizen, when and where  
4 naturalized, each of whom must qualify and sign the application.  
5 The requirements as to residence do not apply to the officers of a  
6 corporation applying for a retailer's license but the officers,  
7 agent or employee who manages and is in charge of the licensed  
8 premises shall possess all of the qualifications required of an  
9 individual applicant for a retailer's license including the  
10 requirement as to residence;

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

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

16 (5) That the place or building in which is proposed to do  
17 business conforms to all applicable laws of health, fire and zoning  
18 regulations and is a safe and proper place or building not within  
19 three hundred feet of a school or church measured from front door  
20 to front door, along the street or streets. This requirement does  
21 not apply to a Class B license or to a place occupied by a beer  
22 licensee so long as it is continuously so occupied. The  
23 prohibition against locating a proposed business in a place or  
24 building within three hundred feet of a school does not apply to a

1 college or university that has notified the commissioner, in  
2 writing, that it has no objection to the location of a proposed  
3 business in a place or building within three hundred feet of the  
4 college or university;

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

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

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

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

1 (c) The provisions and requirements of subsection (a) of this  
2 section are mandatory prerequisites for the issuance and if any  
3 applicant fails to qualify, the license shall be refused. In  
4 addition to the information furnished in any application, the  
5 commissioner may make such additional and independent investigation  
6 of each applicant and of the place to be occupied as necessary or  
7 advisable and, for this reason, all applications, with license fee  
8 and bond, must be filed thirty days prior to the beginning of any  
9 fiscal year. If the application is for an unexpired portion of a  
10 fiscal year, the issuance of license may be withheld for such  
11 reasonable time as necessary for investigation.

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

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

17 (2) That the place to be occupied by the applicant is not a  
18 suitable place or is within three hundred feet of any school or  
19 church measured from front door to front door along the street or  
20 streets. This requirement does not apply to a Class B licensee or  
21 to a place now occupied by a beer licensee so long as it is  
22 continuously so occupied. The prohibition against locating any  
23 such place within three hundred feet of a school does not apply to  
24 a college or university that has notified the commissioner, in

1 writing, that it has no objection to the location of any such place  
2 within three hundred feet; or

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