

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2349

By Delegate Hornbuckle

[Introduced January 11, 2023; Referred to the
Committee on Government Organization then
Finance]

1 A BILL to amend and reenact §11-16-10 of the Code of West Virginia, 1931, as amended, relating
2 to authorizing a temporary foreign brewers import license.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. NONINTOXICATING BEER.

§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; transportation permits; container label registration; and Beer License Operations Fund created; and implementation operations of fee.

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, a certified
3 copy of the certificate of authority issued by the Secretary of State authorizing such foreign
4 corporation to transact business in the state, and a certified copy of its most recent corporation
5 charter. Such application shall be verified and shall state:

6 (1) The name of the corporation and the state under the laws of which it is incorporated;

7 (2) The date of incorporation;

8 (3) The address of the principal office of the corporation;

9 (4) The names and respective addresses of the directors and officers of the corporation;

10 (5) The date that such foreign corporation qualified to transact business in this state; and

11 (6) Such other information as the commissioner, by rule or regulation, may require.

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

16 (c) The license fee for a brewer's license for a foreign corporation selling any
17 nonintoxicating beer product within this state, whether or not its principal place of business be

located in this state, shall be \$1,500 per annum. The license period shall begin on July 1 of each year and end on June 30 of the following year, and if granted for a lesser period, the same shall be prorated semiannually in proportion to the remainder of the fiscal year.

(d) As of July 1, 2019, there is an annual nonrefundable and non-prorated operational fee for all brewers, resident brewers, Class A retail dealers, Class B retail dealers, and distributors of \$100 which shall be paid on or before July 1, 2019 and every July 1 thereafter. All fees collected by the commissioner pursuant to this subsection shall be deposited in a special revenue account in the State Treasury, hereby created, to be known as the Beer License Operations Fund. Moneys in the fund may only be expended by the commissioner for the administration of this article, and as appropriated by law.

(e) All representatives engaged in the selling, marketing, merchandising, or the conducting of any other sales on behalf of any brewer, resident brewer or distributor of nonintoxicating beer shall be issued a license by the commissioner. A licensee is subject to the provisions of §11-16-23 of this code for violations of this article and the rules promulgated thereunder. It is a violation of the code and rules to operate without such license and is punishable by the penalties available under this article. The commissioner shall prescribe forms to complete such licensure.

(f) Any brewer, resident brewer, distributor or any person transporting nonintoxicating beer or nonintoxicating craft beer for resale, and not for personal use, in or through this state on behalf of such licensees or persons, or by contract or other means, who is operating in this state may only transport nonintoxicating beer or nonintoxicating craft beer available for resale, and not personal use, in or through this state. All vehicles transporting nonintoxicating beer or nonintoxicating craft beer shall be issued a nonintoxicating beer transportation permit. Transporting nonintoxicating beer or nonintoxicating craft beer for resale, and not for personal use, in or through this state without a nonintoxicating beer transportation permit is in violation of law and the penalties prescribed under §11-16-18 and §11-16-23 of this code are applicable for any violation. The commissioner shall prescribe forms to complete such permitting.

(g) Any brewer or resident brewer offering nonintoxicating beer or nonintoxicating craft beer for sale under this article shall register, prior to offering such beer for sale in the state, with the commissioner each nonintoxicating beer or nonintoxicating craft beer container label. No nonintoxicating beer or nonintoxicating craft beer brand may be sold under this article unless all of such nonintoxicating beer or nonintoxicating craft beer brand's container labels for the product intended for sale in the state have been registered and reviewed by the commissioner. Prior to registration of any nonintoxicating beer or nonintoxicating craft beer container labels, this review shall include, but not be limited to, a review of the alcohol content, corporate or product information, marketing and advertising so that the nonintoxicating beer or nonintoxicating craft beer container label is not intended to be marketed to persons less than 21 years of age. The commissioner shall remove all nonrenewed nonintoxicating beer or nonintoxicating craft beer container labels, and any licensee who sells nonintoxicating beer or nonintoxicating craft beer with nonrenewed container labels shall be subject to the penalties under §11-16-23 of this code. Failure to register, obtain a review, and a certification for a nonintoxicating beer or nonintoxicating craft beer container label and failure to register such labels will subject the brewer or resident brewer to penalties under said section. The commissioner shall prescribe forms to complete such registration.

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

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

(j) Notwithstanding any other provision of this article to the contrary, any corporation issued

70 a brewer's license under the provisions of this article shall not engage in the business of a
71 distributor or retailer as defined in this article.

72 (k) Notwithstanding any other provision of this article to the contrary, the commissioner
73 may issue a special 30-day license, known as a class T import license, authorizing foreign brewers
74 to transact business in this state pursuant to the provisions of this article, for test marketing and
75 sales of nonintoxicating beer in the state, for participation in festival and fair events pursuant to
76 §11-16-11 of this code, and sampling events pursuant to §11-16-11a of this code. The fee for the T
77 import license fee shall be \$100. No T import license may be renewed in consecutive 30-day
78 periods, but may be reissued for up to a total of 60 days in any one-year period. The commissioner
79 may propose additional requirements by rule for T import licenses.

NOTE: The purpose of this bill is to authorize temporary 30-day licenses for out-of-state nonintoxicating beer brewers to import beer for test marketing and distribute to festivals and samplings.

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