

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 172**

4 (By Senator Kessler (Mr. President))

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6 [Originating in the Committee on the Judiciary;

7 reported February 26, 2013.]

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11 A BILL 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; expanding the definition
14 of "person" for purposes of holding a nonintoxicating beer
15 distributorship; allowing trusts, limited liability companies
16 and associations to hold a distributor's license; and
17 requiring certain disclosures by applicants that are trusts,
18 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 for sale at wholesale to any licensed distributor.

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

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

14 (4) "Commissioner" means the West Virginia Alcohol Beverage
15 Control Commissioner.

16 (5) "Distributor" means and includes any person jobbing or
17 distributing nonintoxicating beer to retailers at wholesale and
18 whose warehouse and chief place of business shall be within this
19 state. For the purpose of a distributor only, the term "person"
20 means and includes an individual, firm, trust, partnership, limited
21 partnership, limited liability company, association or corporation.
22 Any trust licensed as a distributor or any trust that is an owner
23 of a distributor licensee, and the trustee or other persons in
24 active control of the activities of the trust relating to the

1 distributor license, is liable for acts of the trust or its
2 beneficiaries relating to the distributor license that are unlawful
3 acts or violations of article eleven of this chapter
4 notwithstanding the liability of trustees in article ten, chapter
5 forty-four-d of this code.

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

10 (7) "Nonintoxicating beer" means all cereal malt beverages or
11 products of the brewing industry commonly referred to as beer,
12 lager beer, ale and all other mixtures and preparations produced by
13 the brewing industry, including malt coolers and nonintoxicating
14 craft beers containing at least one half of one percent alcohol by
15 volume, but not more than nine and six-tenths of alcohol by weight,
16 or twelve percent by volume, whichever is greater. ~~all of which are~~
17 ~~hereby declared to be nonintoxicating and~~ The word "liquor" as used
18 in chapter sixty of this code ~~shall not be construed to~~ does not
19 include or embrace nonintoxicating beer nor any of the beverages,
20 products, mixtures or preparations included within this definition.
21 (8) "Nonintoxicating beer sampling event" means an event
22 approved by the commissioner for a Class A retail licensee to hold
23 a nonintoxicating beer sampling authorized pursuant to section
24 eleven-a of this article.

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

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

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

14 (12) "Person" means and includes an individual, firm,
15 partnership, limited partnership, limited liability company,
16 association or corporation.

17 (13) "Resident brewer" means any person, firm, association,
18 partnership or corporation whose principal place of business is
19 within the state.

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

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

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

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

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

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

23 (2) The place of birth of applicant, that he or she is a
24 citizen of the United States and of good moral character and, if a

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

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

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

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

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

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

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

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