

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4332**

BY DELEGATES FLEISCHAUER, STATLER, SHAFFER,  
KURCABA, MCCUSKEY, SHOTT, FAST, ROWE, SKINNER,  
SUMMERS AND FRICH

[Introduced January 29, 2016; referred to the  
Committee on Banking and Insurance then the  
Judiciary.]

1 A BILL to amend and reenact §11-16-8 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §60-7-4 of said code, all relating to requiring licensees authorized to  
 3 serve alcoholic liquors or nonintoxicating beer to have certain liability insurance coverage  
 4 to cover the premises of the licensee; establishing statutory minimum level of insurance  
 5 coverage; and directing the Alcoholic Beverage Control Commissioner, upon a finding that  
 6 either statutory minimum insurance coverage is inadequate, to increase statutory  
 7 minimum coverage amounts by legislative rule.

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

1 That §11-16-8 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted; and that §60-7-4 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 11. TAXATION.**

### **ARTICLE 16. NONINTOXICATING BEER.**

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

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

3 (1) The name and residence of the applicant, the duration of such residency, that the  
 4 applicant has been a resident of the state for a period of two years preceding the date of the  
 5 application and that the applicant is twenty-one years of age. If the applicant is a firm, association,  
 6 partnership, limited partnership, limited liability company or corporation, the application shall  
 7 include the residence of the members or officers for a period of two years preceding the date of  
 8 such application. If a person, firm, partnership, limited partnership, limited liability company,  
 9 association, corporation or trust applies for a license as a distributor, such person, or in the case  
 10 of a firm, partnership, limited partnership, limited liability company, association or trust, the  
 11 members, officers, trustees or other persons in active control of the activities of the limited liability  
 12 company, association or trust relating to the license, shall state under oath that each has been a  
 13 bona fide resident of the state for four years preceding the date of such application. If the applicant

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

27 (2) The place of birth of applicant, that he or she is a citizen of the United States and of  
28 good moral character and, if a naturalized citizen, when and where naturalized. If the applicant is  
29 a corporation organized or authorized to do business under the laws of the state, the application  
30 must state when and where incorporated, the name and address of each officer and that each  
31 officer is a citizen of the United States and a person of good moral character. If the applicant is a  
32 firm, association, limited liability company, partnership, limited partnership, trust or has a trust as  
33 an owner, the application shall provide the place of birth of each member of the firm, association,  
34 limited liability company, partnership or limited partnership and of the trustees, beneficiaries or  
35 other persons in active control of the activities of the trust relating to the license and that each  
36 member or trustee, beneficiary or other persons in active control of the activities of the trust  
37 relating to the license is a citizen of the United States and if a naturalized citizen, when and where  
38 naturalized, each of whom must qualify and sign the application. The requirements as to  
39 residence do not apply to the officers of a corporation applying for a retailer's license but the

40 officers, agent or employee who manages and is in charge of the licensed premises shall possess  
41 all of the qualifications required of an individual applicant for a retailer's license including the  
42 requirement as to residence;

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

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

46 (5) That the place or building in which is proposed to do business conforms to all applicable  
47 laws of health, fire and zoning regulations and is a safe and proper place or building not within  
48 three hundred feet of a school or church measured from front door to front door, along the street  
49 or streets. This requirement does not apply to a Class B license or to a place occupied by a beer  
50 licensee so long as it is continuously so occupied. The prohibition against locating a proposed  
51 business in a place or building within three hundred feet of a school does not apply to a college  
52 or university that has notified the commissioner, in writing, that it has no objection to the location  
53 of a proposed business in a place or building within three hundred feet of the college or university;

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

56 (7) That the applicant is the only person in any manner pecuniarily interested in the  
57 business so asked to be licensed and that no other person is in any manner pecuniarily interested  
58 during the continuance of the license; ~~and~~

59 (8) That the applicant has not during five years preceding the date of the application had  
60 a nonintoxicating beer license revoked; and

61 (9) That the applicant has general liability insurance coverage of not less than \$100,000  
62 per occurrence and liquor liability insurance coverage of not less than \$100,000 per occurrence,  
63 to cover liabilities arising out of a licensee's general business operations. The applicant shall  
64 submit proof of coverage from each insurance coverage provider. The commissioner, upon a  
65 finding that the insurance coverage is inadequate to cover claims made against either type of

66 policy, shall, by legislative rule, increase the minimum amounts of insurance coverage for all  
67 applicants.

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

76 (c) The provisions and requirements of subsection (a) of this section are mandatory  
77 prerequisites for the issuance and if any applicant fails to qualify, the license shall be refused. In  
78 addition to the information furnished in any application, the commissioner may make such  
79 additional and independent investigation of each applicant and of the place to be occupied as  
80 necessary or advisable and, for this reason, all applications, with license fee and bond, must be  
81 filed thirty days prior to the beginning of any fiscal year. If the application is for an unexpired  
82 portion of a fiscal year, the issuance of license may be withheld for such reasonable time as  
83 necessary for investigation.

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

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

87 (2) That the place to be occupied by the applicant is not a suitable place or is within three  
88 hundred feet of any school or church measured from front door to front door along the street or  
89 streets. This requirement does not apply to a Class B licensee or to a place now occupied by a  
90 beer licensee so long as it is continuously so occupied. The prohibition against locating any such  
91 place within three hundred feet of a school does not apply to a college or university that has

92 notified the commissioner, in writing, that it has no objection to the location of any such place  
93 within three hundred feet; or

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

## **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

### **ARTICLE 7. LICENSES TO PRIVATE CLUBS.**

**§60-7-4. Application for license; information required; verification; application to be accompanied by fees; bond; college fraternities and sororities ineligible for license; racial discrimination by applicants prohibited.**

1 (a) Application for a license to operate a private club shall be made on such form as may  
2 be prescribed by the commissioner and shall include:

3 (1) The name of the applicant;

4 (2) If the applicant is an unincorporated association, the names and addresses of the  
5 members of its governing board;

6 (3) If the applicant is a corporation, the names and addresses of its officers and directors;

7 (4) The place at which the applicant will conduct its operations and whether the same is  
8 owned or leased by the applicant;

9 (5) The number of members of the applicant;

10 (6) The name or names of any national organizations with which applicant is affiliated and  
11 the nature of such affiliation;

12 (7) The size and nature of the dining and kitchen facilities operated by applicant; ~~and~~

13 (8) Such other information as the commissioner may reasonably require which shall  
14 include, but not be limited to, the criminal records, if any, of each member of the applicant's  
15 governing board and/or its officers and directors who have been convicted of a felony or a crime  
16 involving moral turpitude; and

17 (9) That the applicant has general liability insurance coverage of not less than \$100,000

18 per occurrence and nonintoxicating beer liability or liquor insurance coverage of not less than  
19 \$100,000 per occurrence, to cover liabilities arising out of a licensee's general business  
20 operations. The applicant shall submit proof of coverage from each insurance coverage provider.  
21 The commissioner, upon a finding that the liability insurance coverage is inadequate to cover  
22 claims made against either type of policy, shall, by legislative rule, increase the minimum amounts  
23 of insurance coverage for all applicants

24 (b) The application shall be verified by each member of the governing board of the  
25 applicant if an unincorporated association or, if the applicant is a corporation, by each of its officers  
26 and all members of its board of directors. The application shall be accompanied by the license  
27 fee hereinafter prescribed and by a bond of the applicant in the penal sum of \$5,000 with a  
28 corporate surety authorized to transact business in the State of West Virginia, payable to the State  
29 of West Virginia, which bond shall be conditioned on the payment of all fees herein prescribed  
30 and on the faithful performance of and compliance with the provisions of this article.

31 (c) Under no circumstance may any college fraternity or sorority be issued a license to  
32 operate a private club.

33 (d) No license to operate a private club will be issued to applicants who discriminate  
34 against any person or group of persons because of race or color of such person or group of  
35 persons.

NOTE: The purpose of this bill is to require licensees authorized to serve alcoholic liquors or non-intoxicating beer to have certain liability insurance coverage to cover the premises of the licensee. The bill establishes a statutory minimum level of insurance coverage. The bill directs the Alcoholic Beverage Control Commissioner, upon a finding that either statutory minimum insurance coverage is inadequate, to increase statutory minimum coverage amounts by legislative rule.

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