

THE WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 529

SENATORS TRUMP, TARR, AND RUCKER, *original sponsors*

[Originating in the Committee on the Judiciary;

Reported on February 20, 2019]

1 A BILL to amend and reenact §11-16-3, §11-16-5, §11-16-6a, §11-16-6b, §11-16-8, §11-16-9,
2 §11-16-10, §11-16-12, and §11-16-17a of the Code of West Virginia, 1931, as amended;
3 and to amend said code by adding thereto two new sections, designated §11-16-6c and
4 §11-16-11b, all relating to nonintoxicating beer generally; creating a temporary license for
5 nonintoxicating beer floorplan extensions of existing licensee floorplans; implementing a
6 fee for the license; removing the two growler limit per patron per day for licensees who
7 sell growlers for off premises consumption; increasing allowable growler size to no larger
8 than 128 ounces; providing for certain growler licensees to conduct complimentary
9 samplings; providing a 30-day requirement to issue or deny a license application once the
10 application is completed; implementing a \$100 beer license operations fee and
11 establishing a special revenue account; implementing a reactivation fee for licensees that
12 fail to timely file their renewal applications and pay their license fees; creating a one-day
13 special license for certain nonprofit and tax exempt entities hosting artistic, athletic,
14 charitable, educational, or religious events to purchase and sell nonintoxicating beer and
15 nonintoxicating craft beer; allowing nonintoxicating beer and nonintoxicating craft beer to
16 have a maximum alcohol content of 15 percent by volume and 11.9 percent by weight;
17 providing limitations on special licenses; setting forth requirements for special licenses;
18 providing for a Class B licensee privilege for nonintoxicating beer or nonintoxicating craft
19 beer sales at a designated parking area; implementing a license fee; licensing brewers,
20 resident brewers, and distributor representatives; providing for transportation permits for
21 nonintoxicating beer and nonintoxicating craft beer; requiring nonintoxicating beer label
22 registration; implementing an operational fee for licensed representatives, transportation
23 permits, and container label registration; removing the bond requirements for brewers,
24 resident brewers, distributors, and Class S licenses; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

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

2 (1) "Brand" means a nonintoxicating beer product manufactured, brewed, mixed,
3 concocted, blended, bottled or otherwise produced, ~~or~~ imported, or transshipped by a brewer or
4 manufacturer, the labels of which have been registered and approved by the commissioner, that
5 is being offered for sale or sold in West Virginia by a distributor who has been appointed in a valid
6 franchise agreement or a valid amendment thereto.

7 (2) "Brewer" or "manufacturer" means any person manufacturing, otherwise producing,
8 importing, or transshipping nonintoxicating beer or nonintoxicating craft beer for sale at wholesale
9 to any licensed distributor. Brewer or manufacturer may be used interchangeably throughout this
10 article. A brewer may obtain only one brewer's license for its nonintoxicating beer or
11 nonintoxicating craft beer.

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

16 (4) "Class A retail license" means a retail license permitting the retail sale of liquor at a
17 freestanding liquor retail outlet licensed pursuant to chapter 60 of this code.

18 (5) "Class B retail license" means a retail license permitting the retail sale of liquor at a
19 mixed retail liquor outlet licensed pursuant to chapter 60 of this code.

20 (6) "Commissioner" means the West Virginia Alcohol Beverage Control Administration
21 Commissioner.

22 (7) "Distributor" means and includes any person jobbing or distributing nonintoxicating
23 beer or nonintoxicating craft beer to retailers at wholesale and whose warehouse and chief place
24 of business shall be within this state. For purposes of a distributor only, the term "person" means

25 and includes an individual, firm, trust, partnership, limited partnership, limited liability company,
26 association or corporation. Any trust licensed as a distributor or any trust that is an owner of a
27 distributor licensee, and the trustee or other persons in active control of the activities of the trust
28 relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the
29 distributor license that are unlawful acts or violations of §11-11-1 *et seq.* of this code
30 notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

31 (8) "Franchise agreement" means the written agreement between a brewer and a
32 distributor that is identical as to terms and conditions between the brewer and all its distributors,
33 which agreement has been approved by the commissioner. The franchise agreement binds the
34 parties so that a distributor, appointed by a brewer, may distribute all of the brewer's
35 nonintoxicating beer products, brands or family of brands imported and offered for sale in West
36 Virginia, including, but not limited to, existing brands, line extensions, and new brands all in the
37 brewer's assigned territory for the distributor. All brands and line extensions being imported or
38 offered for sale in West Virginia must be listed by the brewer in the franchise agreement or a
39 written amendment to the franchise agreement. A franchise agreement may be amended by
40 mutual written agreement of the parties as approved by the commissioner with identical terms
41 and conditions for a brewer and all of its distributors. Any approved amendment to the franchise
42 agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually
43 agree in writing to cancel a franchise agreement. A distributor terminated by a brewer as provided
44 in this article and the promulgated rules no longer has a valid franchise agreement. If a brewer
45 has reached an agreement to cancel a distributor or has terminated a distributor, then a brewer
46 may appoint a successor distributor who accedes to all the rights of the cancelled or terminated
47 distributor.

48 (9) "Franchise distributor network" means the distributors who have entered into a binding
49 written franchise agreement, identical as to terms and conditions, to distribute nonintoxicating
50 beer products, brands, and line extensions in an assigned territory for a brewer. A brewer may

51 only have one franchise distributor network: *Provided*, That a brewer that has acquired the
52 manufacturing, bottling, or other production rights for the sale of nonintoxicating beer at wholesale
53 from a selling brewer as specified in §11-16-21(a)(2) of this code shall continue to maintain and
54 be bound by the selling brewer's separate franchise distributor's network for any of its existing
55 brands, line extensions, and new brands.

56 (10) "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, wine,
57 beer, nonintoxicating beer, and other alcohol-related products, as defined pursuant to §60-3A-4
58 of this code.

59 (11) "Growler" means a container or jug that is made of glass, ceramic, metal, or other
60 material approved by the commissioner, that may be no larger than only 32 or 64 128 fluid ounces
61 in size and must be capable of being securely sealed. The growler is utilized by an authorized
62 licensee for purposes of off-premise sales only of nonintoxicating beer or nonintoxicating craft
63 beer for personal consumption not on a licensed premise and not for resale. Notwithstanding any
64 other provision of this code to the contrary, a securely sealed growler is not an open container
65 under federal, state, and local law. A growler with a broken seal is an open container under
66 federal, state, and local law unless it is located in an area of the motor vehicle physically separated
67 from the passenger compartment. The secure sealing of a growler requires the use of a tamper-
68 resistant seal, security tape, or other material, as approved by the commissioner, placed on or
69 over the growler's opening, which seal, security tape or other material is clearly marked with the
70 date of the secure sealing by the authorized licensee who is selling the growler.

71 (12) "Line extension" means any nonintoxicating beer product that is an extension of brand
72 or family of brands that is labeled, branded, advertised, marketed, promoted, or offered for sale
73 with the intent or purpose of being manufactured, imported, associated, contracted, affiliated, or
74 otherwise related to a brewer's existing brand through the use of a brewer, its subsidiaries, parent
75 entities, contracted entities, affiliated entities, or other related entities. In determining whether a
76 nonintoxicating beer product is a line extension, the commissioner may consider, but is not limited

77 to, the following factors: Name or partial name; trade name or partial trade name; logos;
78 copyrights; trademarks or trade design; product codes; advertising promotion; or pricing.

79 (13) “Nonintoxicating beer” means all natural cereal malt beverages or products of the
80 brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and
81 preparations produced by the brewing industry, including malt coolers and nonintoxicating craft
82 beers with no caffeine infusion or any additives masking or altering the alcohol effect containing
83 at least one half of one percent alcohol by volume, but not more than ~~nine and six tenths~~ 11.9
84 percent of alcohol by weight, or ~~42~~ 15 percent alcohol by volume, whichever is greater. The word
85 “liquor” as used in chapter 60 of this code does not include or embrace nonintoxicating beer nor
86 any of the beverages, products, mixtures, or preparations included within this definition.

87 (14) “Nonintoxicating beer floor plan extension” means a temporary one-day extension of
88 an existing Class A licensee’s floor plan to a contiguous, adjoining and bounded area, such as a
89 parking lot or outdoor area, which shall for the temporary period encompass the licensee’s
90 licensed premises; further such license shall be endorsed or approved by the county or
91 municipality where the license is located; such license shall be in good standing with the
92 commissioner, and further such temporary event shall cease on or before midnight of the
93 approved temporary one-day event.

94 (15) “Nonintoxicating beer sampling event” means an event approved by the
95 commissioner for a Class A retail licensee to hold a nonintoxicating beer sampling authorized
96 pursuant to §11-16-11a of this code.

97 (16) “Nonintoxicating beer sampling day” means any days and hours of the week
98 where Class A retail licensees may sell nonintoxicating beer pursuant to §11-16-11a and §11-16-
99 18(a)(1) of this code, and is approved, in writing, by the commissioner to conduct a nonintoxicating
100 beer sampling event.

101 (17) “Nonintoxicating craft beer” means any beverage obtained by the natural
102 fermentation of barley, malt, hops, or any other similar product or substitute and containing not

103 less than one half of one percent by volume and not more than ~~42~~ 15 percent alcohol by volume
104 or ~~nine and six tenths~~ 11.9 percent alcohol by weight with no caffeine infusion or any additives
105 masking or altering the alcohol effect.

106 ~~(17)~~ (18) "Original container" means the container used by a resident brewer or brewer at
107 the place of manufacturing, bottling, or otherwise producing nonintoxicating beer or
108 nonintoxicating craft beer for sale at wholesale.

109 ~~(18)~~ (19) "Person" means and includes an individual, firm, partnership, limited partnership,
110 limited liability company, association, or corporation.

111 ~~(19)~~ (20) "Private club" means a license issued pursuant to §60-7-1 *et seq.* of this code.

112 ~~(20)~~ (21) "Resident brewer" means any brewer or manufacturer of nonintoxicating beer or
113 nonintoxicating craft beer whose principal place of business and manufacture is located in the
114 State of West Virginia and which does not brew or manufacture more than 25,000 barrels of
115 nonintoxicating beer or nonintoxicating craft beer annually, and does not self-distribute more than
116 10,000 barrels thereof in the State of West Virginia annually.

117 ~~(24)~~ (22) "Retailer" means any person selling, serving, or otherwise dispensing
118 nonintoxicating beer and all products regulated by this article, including, but not limited to, malt
119 coolers at his or her established and licensed place of business.

120 ~~(22)~~ (23) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia
121 or the commissioner's designee.

§11-16-5. State license required; alcoholic content of beer manufactured for sale without state.

1 No person shall manufacture, tender, sell, possess for sale, transport, or distribute
2 nonintoxicating beer except in accordance with the provisions of this article, and after first
3 obtaining a state license therefor, as provided in this article. ~~Nothing contained in this article shall~~
4 ~~prohibit any brewer located within the state from manufacturing or transporting for sale without~~
5 ~~the state beer of an alcoholic strength greater than that of nonintoxicating beer~~

§11-16-6a. Brewer and resident brewer license to manufacture, sell, and provide complimentary samples.

1 (a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to
2 regulate, control, and support the brewing, manufacturing, distribution, sale, consumption,
3 transportation, and storage of nonintoxicating beer and nonintoxicating craft beer and its industry
4 in this state in order to protect the public health, welfare, and safety of the citizens of this state,
5 and promote hospitality and tourism. Therefore, this section authorizes a licensed brewer or
6 resident brewer with its principal place of business and manufacture located in this state to have
7 certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer
8 manufactured in this state for the benefit of the citizens of this state, the state’s growing brewing
9 industry, and the state’s hospitality and tourism industry, all of which are vital components for the
10 state’s economy.

11 (b) *Sales of nonintoxicating beer.* — A licensed brewer or resident brewer with its principal
12 place of business and manufacture located in the State of West Virginia may offer only
13 nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident
14 brewer for retail sale to customers from the brewer’s or resident brewer’s licensed premises for
15 consumption off of the licensed premises only in the form of kegs, bottles, cans, or growlers for
16 personal consumption and not for resale. A licensed brewer or resident brewer may not sell, give
17 or furnish nonintoxicating beer for consumption on the premises of the principal place of business
18 and manufacture located in the State of West Virginia, except for the limited purpose of
19 complimentary samples as permitted in subsection (c) of this section.

20 (c) *Complimentary samples.* — A licensed brewer or resident brewer with its principal
21 place of business and manufacture located in the State of West Virginia may only offer
22 complimentary samples of nonintoxicating beer or nonintoxicating craft beer brewed at the
23 brewer’s or resident brewer’s principal place of business and manufacture located in the State of
24 West Virginia. The complimentary samples may be no greater than two ounces per sample per

25 patron, and a sampling shall not exceed 10 complimentary two-ounce samples per patron per
26 day. A licensed brewer or resident brewer providing complimentary samples shall provide
27 complimentary food items to the patron consuming the complimentary samples; and prior to any
28 sampling, verify, using proper identification, that the patron sampling is 21 years of age or over
29 and that the patron is not visibly intoxicated.

30 (d) *Retail sales.* — Every licensed brewer or resident brewer under this section shall
31 comply with all the provisions of this article as applicable to nonintoxicating beer retailers when
32 conducting sales of nonintoxicating beer or nonintoxicating craft beer and shall be subject to all
33 applicable requirements and penalties in this article.

34 (e) *Payment of taxes and fees.* — A licensed brewer or resident brewer under this section
35 shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in addition to any
36 other taxes and fees required, and meet applicable licensing provisions as required by this
37 chapter and by rule of the commissioner.

38 (f) *Advertising.* — A licensed brewer or resident brewer under this section may advertise
39 a particular brand or brands of nonintoxicating beer or nonintoxicating craft beer produced by the
40 licensed brewer or resident brewer and the price of the nonintoxicating beer or nonintoxicating
41 craft beer subject to state and federal requirements or restrictions. The advertisement may not
42 encourage intemperance.

43 (g) *Growler requirements.* — A licensed brewer or resident brewer under this section must
44 fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensed
45 brewer or resident brewer under this section must sanitize, fill, securely seal, and label any growler
46 prior to its sale. A licensed brewer or resident brewer under this section may only offer for retail
47 sale ~~up to two 64-ounce, or four 32-ounce,~~ growlers no larger than 128 fluid ounces of
48 nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident
49 brewer ~~per customer per day~~ for personal consumption off of the licensed premises and not for
50 resale. A licensed brewer or resident brewer under this section may refill a growler subject to the

51 requirements of this section. A licensed brewer or resident brewer shall visually inspect any
52 growler before filling or refilling it. A licensed brewer or resident brewer may not fill or refill any
53 growler that appears to be cracked, broken, unsafe or otherwise unfit to serve as a sealed
54 beverage container.

55 (h) *Growler labeling.* — A licensed brewer or resident brewer under this section selling
56 growlers shall affix a conspicuous label on all sold and securely sealed growlers listing the name
57 of the licensee selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft
58 beer in the growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating
59 craft beer in the growler and the date the growler was filled or refilled, and, further, all labeling on
60 the growler shall be consistent with all federal labeling and warning requirements.

61 (i) *Growler sanitation.* — A licensed brewer or resident brewer authorized under this
62 section shall clean and sanitize all growlers he or she fills or refills in accordance with all state
63 and county health requirements prior to its sealing. In addition, the licensed brewer or resident
64 brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap
65 lines, pipe lines, barrel tubes and any other related equipment used to fill or refill growlers. Failure
66 to comply with this subsection may result in penalties under §11-16-23 of this code.

67 (j) *Fee.* — There is no additional fee for a licensed brewer or resident brewer authorized
68 under this section to sell growlers.

69 (k) *Limitations on licensees.* — To be authorized under this section, a licensed brewer or
70 resident brewer may not produce more than 25,000 barrels per calendar year at the brewer's or
71 resident brewer's principal place of business and manufacture located in the State of West
72 Virginia. No more than one brewer or resident brewer license may be issued to a single person
73 or entity and no person may hold both a brewer and a resident brewer license. A licensed brewer
74 or resident brewer under this section may only conduct tours, give complimentary samples and
75 sell growlers during the hours of operation set forth in §11-16-18(a)(1) of this code. A licensed

76 brewer or resident brewer authorized under this section shall be subject to the applicable penalties
77 under §11-16-23 of this code for violations of this section.

78 (l) *Rules.* — The commissioner, in consultation with the Bureau for Public Health
79 concerning sanitation, is authorized to propose rules for legislative approval, pursuant to §29A-3-
80 1 *et seq.* of this code, to implement this section.

**§11-16-6b. Brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail
licensee, and Class B retail licensee's authority to sell growlers.**

1 (a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to
2 regulate, control and support the brewing, manufacturing, distribution, sale, consumption,
3 transportation, and storage of nonintoxicating beer and nonintoxicating craft beer and its industry
4 in this state in order to protect the public health, welfare, and safety of the citizens of this state
5 and promote hospitality and tourism. Therefore, this section authorizes a licensed brewpub, Class
6 A retail dealer, Class B retail dealer, private club, Class A retail licensee, or Class B retail licensee
7 to have certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating
8 craft beer manufactured in this state for the benefit of the citizens of this state, the state's growing
9 brewing industry, and the state's hospitality and tourism industry, all of which are vital components
10 for the state's economy.

11 (b) *Sales of nonintoxicating beer.* — A licensed brewpub, Class A retail dealer, Class B
12 retail dealer, private club, Class A retail licensee, or Class B retail licensee who pays the fee in
13 subsection (i) of this section and meets the requirements of this section may offer nonintoxicating
14 beer or nonintoxicating craft beer for retail sale to patrons from their licensed premises in a growler
15 for personal consumption only off of the licensed premises and not for resale. Prior to the sale,
16 the licensee shall verify, using proper identification, that any patron purchasing nonintoxicating
17 beer or nonintoxicating craft beer is 21 years of age or over and that the patron is not visibly
18 intoxicated. A licensee authorized under this section may not sell, give or furnish alcoholic liquors,
19 including wine, for consumption off of its licensed premises, unless it is a private club licensed to

20 sell sealed wine for consumption off of the licensed premises and meets the requirements set out
21 in §60-8-3(j) and §60-8-3(l) of this code, for the sale of wine, not liquor.

22 (c) *Retail sales.* — Every licensee authorized under this section shall comply with all the
23 provisions of this article as applicable to nonintoxicating beer retailers when conducting sales of
24 nonintoxicating beer or nonintoxicating craft beer and shall be subject to all applicable
25 requirements and penalties in this article.

26 (d) *Payment of taxes and fees.* — A licensee authorized under this section shall pay all
27 taxes and fees required of licensed nonintoxicating beer retailers, in addition to any other taxes
28 and fees required, and meet applicable licensing provisions as required by this chapter and by
29 rule of the commissioner.

30 (e) *Advertising.* — A licensee authorized under this section may advertise a particular
31 brand or brands of nonintoxicating beer or nonintoxicating craft beer and the price of the
32 nonintoxicating beer or nonintoxicating craft beer subject to state and federal requirements or
33 restrictions. The advertisement may not encourage intemperance.

34 (f) *Growler requirements.* — A licensee authorized under this section must fill a growler
35 and patrons are not permitted to access the secure area or fill a growler. A licensee authorized
36 under this section must sanitize, fill, securely seal, and label any growler prior to its sale. A
37 licensee authorized under this section may only offer for retail sale ~~up to two 64-ounce, or four~~
38 ~~32-ounce,~~ growlers no larger than 128 fluid ounces of nonintoxicating beer or nonintoxicating craft
39 beer ~~per customer per day~~ for personal consumption off of the licensed premises and not for
40 resale. A licensee under this section may refill a growler subject to the requirements of this
41 section. A licensee shall visually inspect any growler before filling or refilling it. A licensee may
42 not fill or refill any growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve
43 as a sealed beverage container.

44 (g) *Growler labeling.* — A licensee authorized under this section selling growlers shall affix
45 a conspicuous label on all sold and securely sealed growlers listing the name of the licensee

46 selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer in the
47 growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating craft beer in
48 the growler, and the date the growler was filled or refilled, and, further, all labeling on the growler
49 shall be consistent with all federal labeling and warning requirements.

50 (h) *Growler sanitation.* — A licensed brewer or resident brewer authorized under this
51 section shall clean and sanitize all growlers he or she fills or refills in accordance with all state
52 and county health requirements prior to its sealing. In addition, the licensed brewer or resident
53 brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap
54 lines, pipe lines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure
55 to comply with this subsection may result in penalties under §11-16-23 of this code.

56 (i) ~~Fee~~ Fees. — Commencing July 1, 2015, and by every July 1 thereafter, there is an
57 annual \$100 nonrefundable fee for a licensee, except for a licensed brewpub, to sell growlers as
58 provided by this section. The licensee must be in good standing with the state at the time of paying
59 the fee.

60 (j) Complimentary samples. — A licensee authorized under this section may provide
61 complimentary samples which may be no greater than one ounce per sample and a sampling
62 shall not exceed three different nonintoxicating beer or nonintoxicating craft beer complimentary
63 one-ounce samples per patron per day. A licensee authorized under this section providing
64 complimentary samples shall prior to any sampling verify, using proper identification, that the
65 patron sampling is 21 years of age or over and that the patron is not visibly intoxicated. All
66 nonintoxicating beer and nonintoxicating craft beer utilized for sampling purposes must be
67 purchased from the licensee's inventory.

68 (k) Limitations on licensees. — A licensee under this section may only sell growlers during
69 the hours of operation set forth in §11-16-18(a)(1) of this code. Any licensee licensed under this
70 section must maintain a secure area for the sale of nonintoxicating beer or nonintoxicating craft
71 beer in a growler. The secure area must only be accessible by the licensee. Any licensee licensed

72 under this section shall be subject to the applicable penalties under §11-16-23 of this code for
73 violations of this section.

74 ~~(k)~~ (l) *Nonapplicability of certain statutes.* — Notwithstanding any other provision of this
75 code to the contrary, licensees under this section are permitted to break the seal of the original
76 container for the limited purpose of filling a growler or providing complimentary samples as
77 provided in this section. Any unauthorized sale of nonintoxicating beer or nonintoxicating craft
78 beer or any consumption not permitted on the licensee’s licensed premises is subject to penalties
79 under this article.

80 ~~(j)~~ (m) *Rules.* — The commissioner is authorized to propose rules for legislative approval,
81 pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

**§11-16-6c Class B retail dealer which is a grocery store, mobile application, or web-based
sales privilege permit; fee.**

1 (a) A Class B retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating
2 craft beer and who operates a grocery store containing over \$100,000 of fresh produce and
3 saleable food and food products fit for human consumption in a combination of displayed and
4 stored inventory may apply for a Class B license privilege granting the licensee the ability to
5 complete the sale of such nonintoxicating beer or nonintoxicating craft beer in the original sealed
6 container for off-premises consumption to a person purchasing the nonintoxicating beer or
7 nonintoxicating craft beer from a vehicle:

8 (1) If the vehicle is parked in a licensed parking area which is contiguous to the Class B
9 licensee’s licensed premises; or

10 (2) If the vehicle is parked in a licensed parking area which is within 500 feet of the Class
11 B licensee.

12 (b) The parking area referenced in subsection (a) of this section shall be designated by
13 signage solely for the use of persons who have previously ordered items including, but not limited

14 to, nonintoxicating beer or nonintoxicating craft beer using a mobile application or web-based
15 software program.

16 (c) No nonintoxicating beer or nontoxicating craft beer may be loaded into a vehicle under
17 this section unless the Class B licensee or such licensee's staff have verified that both the person
18 placing the order, and, if different from the person placing the order, the person picking up the
19 order are 21 years of age or older and not noticeably intoxicated; and

20 (d) To operate under this section, a Class B retail dealer licensee must be in good standing
21 with the commissioner, apply, qualify, pay the Class B license privilege fee and obtain the permit
22 for the Class B licensee privilege for nonintoxicating beer or nonintoxicating craft beer sales at a
23 designated parking area. The Class B license privilege permit nonrefundable and non-prorated
24 annual fee is \$250. For purposes of criminal enforcement of the provisions of this article, persons
25 placing orders and picking up orders are deemed to be purchasers.

26 (e) The Licensee shall be subject to all requirements, penalties and sanctions of this
27 article.

§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 21 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 §44D-10-
16 1013 of this code. This certification of trust shall include the excerpts described in §44D-10-
17 1013(e), of this code and shall further state, under oath, the names, addresses, Social Security
18 numbers and birth dates of the beneficiaries of the trust and certify that the trustee and
19 beneficiaries are 21 years of age or older. If a beneficiary is not 21 years of age, the certification
20 of trust must state that such beneficiary's interest in the trust is represented by a trustee, parent,
21 or legal guardian who is 21 years of age and who will direct all actions on behalf of such
22 beneficiary related to the trust with respect to the distributor until the beneficiary is 21 years of
23 age. Any beneficiary who is not 21 years of age or older shall have his or her trustee, parent, or
24 legal guardian include in the certification of trust and state under oath his or her name, address,
25 Social Security number and birth date;

26 (2) The place of birth of applicant, that he or she is a citizen of the United States and of
27 good moral character and, if a naturalized citizen, when and where naturalized. If the applicant is
28 a corporation organized or authorized to do business under the laws of the state, the application
29 must state when and where incorporated, the name and address of each officer, and that each
30 officer is a citizen of the United States and a person of good moral character. If the applicant is a
31 firm, association, limited liability company, partnership, limited partnership, trust or has a trust as
32 an owner, the application shall provide the place of birth of each member of the firm, association,
33 limited liability company, partnership or limited partnership and of the trustees, beneficiaries or
34 other persons in active control of the activities of the trust relating to the license and that each
35 member or trustee, beneficiary or other persons in active control of the activities of the trust
36 relating to the license is a citizen of the United States, and if a naturalized citizen, when and where
37 naturalized, each of whom must qualify and sign the application. The requirements as to

38 residence do not apply to the officers of a corporation applying for a retailer's license but the
39 officers, agent, or employee who manages and is in charge of the licensed premises shall possess
40 all of the qualifications required of an individual applicant for a retailer's license including the
41 requirement as to residence;

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

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

45 (5) That the place or building in which is proposed to do business conforms to all applicable
46 laws of health, fire and zoning regulations and is a safe and proper place or building not within
47 300 feet of a school or church measured from front door to front door, along the street or streets.
48 This requirement does not apply to a Class B license or to a place occupied by a beer licensee
49 so long as it is continuously so occupied. The prohibition against locating a proposed business in
50 a place or building within 300 feet of a school does not apply to a college or university that has
51 notified the commissioner, in writing, that it has no objection to the location of a proposed business
52 in a place or building within 300 feet of the college or university;

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

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

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

60 (b) In the case of an applicant that is a trust or has a trust as an owner, a distributor license
61 may be issued only upon submission by the trustees or other persons in active control of the
62 activities of the trust relating to the distributor license of a true and correct copy of the written trust
63 instrument to the commissioner for his or her review. Notwithstanding any provision of law to the

64 contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this
65 section is confidential and is not a public record and is not available for release pursuant to the
66 West Virginia Freedom of Information Act codified in 29B-1-1 *et seq.* of this code.

67 (c) The provisions and requirements of subsection (a) of this section are mandatory
68 prerequisites for the issuance and, if any applicant fails to qualify, the license shall be refused. In
69 addition to the information furnished in any application, the commissioner may make such
70 additional and independent investigation of each applicant and of the place to be occupied as
71 necessary or advisable and, for this reason, all applications, with license fee and bond, must be
72 ~~filed thirty days prior to the beginning of any fiscal year. If the application is for an unexpired~~
73 ~~portion of a fiscal year, the issuance of license may be withheld for such reasonable time as~~
74 ~~necessary for investigation~~ submitted with all true and correct information. For the purpose of
75 conducting such independent investigation, the commissioner may withhold the granting or
76 refusal to grant such license for a 30-day period or until the applicant has completed the conditions
77 set forth in this section. If it shall appear that such applicant meets the requirements in the code
78 and the rules, including, but not limited to, being a suitable person of good reputation and morals;
79 having made no false statements or material misrepresentations; involving no hidden ownership;
80 and having no persons with an undisclosed pecuniary interest contained in such application.If
81 there are no other omissions or failures by the applicant to complete the application, as
82 determined by the commissioner, the commissioner shall issue a license authorizing the applicant
83 to sell nonintoxicating beer or nonintoxicating craft beer.

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 300
88 feet of any school or church measured from front door to front door along the street or streets.

89 This requirement does not apply to a Class B licensee or to a place now occupied by a beer

90 licensee so long as it is continuously so occupied. The prohibition against locating any such place
91 within 300 feet of a school does not apply to a college or university that has notified the
92 commissioner, in writing, that it has no objection to the location of any such place within 300 feet;
93 or

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

**§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of
nonintoxicating beer permitted; distributors; brewers; brewpubs.**

1 (a) All retail dealers, distributors, brewpubs, brewers and resident brewers of
2 nonintoxicating beer and of nonintoxicating craft beer shall pay an annual fee to maintain an active
3 license as required by this article. The license period begins on July 1 of each year and ends on
4 June 30 of the following year. If the license is granted for a shorter period, then the license fee
5 shall be computed semiannually in proportion to the remainder of the fiscal year: Provided, That
6 if a licensee fails to complete a renewal application and make payment of its annual license fee
7 in renewing its license on or before June 30 of any subsequent year, after initial application, then
8 an additional \$150 reactivation fee shall be charged and paid by the licensee; the fee may not be
9 prorated or refunded, prior to the processing of any renewal application and applicable full year
10 annual license fee; and furthermore a licensee who continues to operate upon the expiration of
11 its license is subject to all fines, penalties and sanctions available in §11-16-23 of this code, all
12 as determined by the commissioner.

13 (b) The annual license fees are as follows:

14 (1) Retail dealers shall be divided into two classes: Class A and Class B.

15 (A) For a Class A retail dealer, the license fee is \$150 for each place of business; the
16 license fee for social, fraternal or private clubs not operating for profit, and having been in
17 continuous operation for two years or more immediately preceding the date of application, is \$150:

18 *Provided*, That railroads operating in this state may dispense nonintoxicating beer upon payment
19 of an annual license tax of \$10 for each dining, club or buffet car in which the beer is dispensed.

20 Class A licenses issued for railroad dining, club or buffet cars authorize the licensee to
21 sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All
22 other Class A licenses authorize the licensee to sell nonintoxicating beer at retail for consumption
23 on or off the licensed premises.

24 (B) For a Class B retail dealer, the license fee, authorizing the sale of both chilled and
25 unchilled beer, is \$150 for each place of business. A Class B license authorizes the licensee to
26 sell nonintoxicating beer at retail in bottles, cans or other sealed containers only, and only for
27 consumption off the licensed premises. A Class B retailer may sell to a patron, for personal use
28 and not for resale, quantities of draught beer in original containers that are no larger in size than
29 one-half barrel for off-premises consumption.

30 A Class B license may be issued only to the proprietor or owner of a grocery store. For
31 the purpose of this article, the term "grocery store" means any retail establishment commonly
32 known as a grocery store or delicatessen, and caterer or party supply store, where food or food
33 products are sold for consumption off the premises, and includes a separate and segregated
34 portion of any other retail store which is dedicated solely to the sale of food, food products and
35 supplies for the table for consumption off the premises. Caterers or party supply stores are
36 required to purchase the appropriate licenses from the Alcohol Beverage Control Administration.

37 (2) For a distributor, the license fee is \$1,000 for each place of business.

38 (3) For a brewer or a resident brewer with its principal place of business or manufacture
39 located in this state and who produces:

40 (A) Twelve thousand five hundred barrels or less of nonintoxicating beer or nonintoxicating
41 craft beer, the license fee is \$500 for each place of manufacture;

42 (B) Twelve thousand five hundred one barrels and up to 25,000 barrels of nonintoxicating
43 beer or nonintoxicating craft beer, the license fee is \$1,000 for each place of manufacture;

44 (C) More than 25,001 barrels of nonintoxicating beer or nonintoxicating craft beer, the
45 license fee is \$1,500 for each place of manufacture.

46 (4) For a brewer whose principal place of business or manufacture is not located in this
47 state, the license fee is \$1,500. The brewer is exempt from the requirements set out in subsections
48 (c), (d) and (e) of this section: *Provided*, That a brewer whose principal place of business or
49 manufacture is not located in this state that produces less than 25,000 barrels of nonintoxicating
50 beer or nonintoxicating craft beer may choose to apply, in writing, to the commissioner to be
51 subject to the variable license fees of subdivision (3), subsection (b) of this section and the
52 requirements set out in subsections (c), (d) and (e) of this section subject to investigation and
53 approval by the commissioner as to brewer requirements.

54 (5) For a brewpub, the license fee is \$500 for each place of manufacture.

55 (c) As part of the application or renewal application and in order to determine a brewer or
56 resident brewer's license fee pursuant to this section, a brewer or resident brewer shall provide
57 the commissioner, on a form provided by the commissioner, with an estimate of the number of
58 nonintoxicating beer or nonintoxicating craft beer barrels and gallons it will produce during the
59 year based upon the production capacity of the brewer's or resident brewer's manufacturing
60 facilities, and the prior year's production and sales volume of nonintoxicating beer or
61 nonintoxicating craft beer.

62 (d) On or before July 15 of each year, every brewer or resident brewer who is granted a
63 license shall file a final report, on a form provided by the commissioner, that is dated as of June
64 30 of each year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in
65 barrels and gallons produced at its principal place of business and manufacture during the prior
66 year.

67 (e) If the actual total production of nonintoxicating beer or nonintoxicating craft beer by the
68 brewer or resident brewer exceeded the brewer's or resident brewer's estimate that was filed with
69 the application or renewal for a brewer's or resident brewer's license for that period, then the

70 brewer or resident brewer shall include a remittance for the balance of the license fee pursuant
71 to this section that would be required for the final, higher level of production.

72 (f) Any brewer or resident brewer failing to file the reports required in subsections (c) and
73 (d) of this section, and who is not exempt from the reporting requirements, shall, at the discretion
74 of the commissioner, be subject to the penalties set forth in §11-16-23 of this code.

75 (g) Notwithstanding subsections (a) and (b) of this section, the license fee per event for a
76 nonintoxicating beer floor plan extension is \$100, and the fee may not be prorated or refunded,
77 and must be accompanied with a license application, certification that the event meets certain
78 requirements in the code and rules, and such other information as the commissioner may
79 reasonably require, at least 15 days prior to the event, all as determined by the commissioner.

**§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, ~~the bond~~
3 ~~required by section nine of this article~~ a certified copy of the certificate of authority issued by the
4 Secretary of State authorizing such foreign corporation to transact business in the state, and a
5 certified copy of its most recent corporation charter. Such application shall be verified and shall
6 state:

- 7 (1) The name of the corporation and the state under the laws of which it is incorporated;
8 (2) The date of incorporation;
9 (3) The address of the principal office of the corporation;
10 (4) The names and respective addresses of the directors and officers of the corporation;
11 (5) The date that such foreign corporation qualified to transact business in this state; and

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

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

17 (c) The license fee for a brewer's license for a foreign corporation selling any
18 nonintoxicating beer product within this state, whether or not its principal place of business be
19 located in this state, shall be \$1,500 per annum. The license period shall begin on July 1 of each
20 year and end on June 30 of the following year, and if granted for a lesser period, the same shall
21 be prorated semiannually in proportion to the remainder of the fiscal year.

22 (d) As of July 1, 2019, there is an annual nonrefundable and non-prorated operational fee
23 for all brewers, resident brewers, Class A retail dealers, Class B retail dealers, and distributors of
24 \$100 which shall be paid on or before July 1, 2019 and every July 1 thereafter. All fees collected
25 by the commissioner pursuant to this subsection shall be deposited in a special revenue account
26 in the State Treasury, hereby created, to be known as the Beer License Operations Fund. Moneys
27 in the fund may only be expended by the commissioner for the administration of this article, and
28 as appropriated by law.

29 (e) All sales representatives for engaged in the selling, marketing, merchandising, or the
30 conducting of any other sales on behalf of any brewer, or ~~manufacturer~~ resident brewer or
31 distributor of nonintoxicating beer shall be issued a permit license by the commissioner. The
32 permit for each sales representative of or employed by a licensed brewer or manufacturer shall
33 be \$50. A licensee is subject to the provisions of §11-16-23 of this code for violations of this article
34 and the rules promulgated thereunder. It is a violation of the code and rules to operate without
35 such license and is punishable by the penalties available under this article. The commissioner
36 shall prescribe forms to complete such licensure.

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

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

62 brewer to penalties under said section. The commissioner shall prescribe forms to complete such
63 registration.

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

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

72 ~~(g)~~(j) Notwithstanding any other provision of this article to the contrary, any corporation
73 issued a brewer's license under the provisions of this article shall not engage in the business of
74 a distributor or retailer as defined in this article.

§11-16-11b. Special license for one-day charitable events; application; license subject to provisions of article; exception.

1 (1) The commissioner may issue a special one-day license to be designated a Class S1
2 license for the retail sale of nonintoxicating beer and nonintoxicating craft beer to a duly-organized
3 nonprofit corporation, limited liability entity, or an association having received federal tax exempt
4 status allowing the sale and serving of nonintoxicating beer or nonintoxicating craft beer when
5 raising money for artistic, athletic, charitable, educational, or religious purposes. The
6 commissioner may not charge a fee to the applicant that meets requirements for licensure. The
7 special license shall be issued for a term no longer than one day. No more than six licenses may
8 be issued to any single licensee during any calendar year. The license application shall contain a
9 copy of the documents showing approved federal tax-exempt status and other information
10 required by the commissioner and shall be submitted to the commissioner at least 15 days prior
11 to the event. Nonintoxicating beer served and sold during the event shall be purchased from a

12 licensed distributor, or resident brewer, acting in the limited capacity of a distributor for its own
13 products, that services the location where the festival, fair, or other event is occurring. All
14 distributors and resident brewers in the area must be notified in writing by mail, facsimile or
15 electronic mail of the event in advance and be presented with the opportunity to participate in the
16 event. Licensed representatives of distributors, brewers, or resident brewers may attend the one-
17 day event and discuss their products, but may not engage in the serving or selling of the
18 nonintoxicating beer or nonintoxicating craft beer. A licensee licensed by this section may use
19 bona fide employees or volunteers of the charitable entity to sell and serve nonintoxicating beer
20 and nonintoxicating craft beer.

21 (2) A license issued under the provisions of this section and the licensee holding the
22 license are subject to all other provisions of this article and the rules and orders of the
23 commissioner relating to the special license: *Provided*, That the commissioner may by rule or
24 order allow certain waivers or exceptions with respect to those provisions, rules, or orders as the
25 circumstances of each event requires, including, without limitation, the right to revoke or suspend
26 any license issued pursuant to this section prior to any notice or hearing notwithstanding the
27 provisions of §11-16-24 of this code: *Provided, however*, That under no circumstances may the
28 provisions §11-16-18(a)(1), §11-16-18(a)(2), or §11-16-18(a)(3) of this code, be waived or an
29 exception granted with respect to those provisions.

**§11-16-12. When bond not required; bond of brewer, distributor and a Class A retail dealer;
action on bond of retail dealer upon revocation of license; duty of prosecuting
attorney.**

1 ~~(a) In addition to furnishing the information required by this article, each brewer or~~
2 ~~distributor applying for a license under this article shall furnish, as prerequisite to a license, a bond~~
3 ~~with some solvent surety company as surety, to be approved by the commissioner, payable to~~
4 ~~the state of West Virginia, conditioned for the payment of any and all additional taxes accruing~~
5 ~~during the period of such license, and conditioned further for the faithful observance of the~~

6 ~~provisions of this article, the rules, regulations and orders promulgated pursuant thereto and of~~
7 ~~any other laws of the state of West Virginia generally relating to the sale, transportation, storage~~
8 ~~and distribution of nonintoxicating beer, which said bonds shall be forfeited to the state upon the~~
9 ~~revocation of the license of any such brewer or distributor. The amount of such bond in the case~~
10 ~~of a resident brewer or brewpub shall be not less than \$5,000 nor more than \$10,000 and in the~~
11 ~~case of a distributor, not less than \$2,000 nor more than \$5,000 for each place of business~~
12 ~~licensed and conducted within the state, the amount of such bond, between the minimum and~~
13 ~~maximum amounts, to be determined in the discretion of the commissioner. There shall be no~~
14 ~~bond for a brewer, resident brewer, distributor, Class S brewpub license, as the license privilege~~
15 ~~itself secures the payment of taxes and is subject to suspension and revocation for failure to pay~~
16 ~~said taxes. In the case of brewers shipping nonintoxicating beer into the state, any brewer must~~
17 ~~also furnish a bond in a penalty of not less than \$5,000 nor more than \$25,000 conditioned as~~
18 ~~hereinabove in this subsection provided and any bond furnished pursuant hereto shall be forfeited~~
19 ~~to the state in the full amount of said bond upon revocation of license of any such brewer or~~
20 ~~distributor. Such money received by the state shall be credited to the State Fund, General~~
21 ~~Revenue~~

22 (b) Each Class A retail dealer, in addition to furnishing the information required by this
23 article, shall furnish, as prerequisite to obtaining a license, a bond with some solvent surety
24 company as surety, to be approved by the commissioner, payable to the State of West Virginia,
25 in the amount not less than \$500 nor more than \$1,000 within the discretion of the commissioner.
26 All such bonds shall be conditioned for the faithful observance of the provisions of this article, the
27 rules, regulations and orders promulgated pursuant thereto and of any other laws of the State of
28 West Virginia generally relating to the distribution, sale and dispensing of nonintoxicating beer
29 and shall be forfeited to the state in the full amount of said bond upon the revocation of the license
30 of any such retail dealer. Such money received by the state shall be credited to the State Fund,
31 General Revenue.

32 (c) Upon the revocation of the license of any Class A retail dealer by the commissioner or
33 by any court of competent jurisdiction, the commissioner or the clerk of said court shall notify the
34 prosecuting attorney of the county wherein such retail dealer's place of business is located, or the
35 prosecuting attorney of the county wherein the licensee resides, of such revocation, and, upon
36 receipt of said notice, it shall be the duty of such prosecuting attorney forthwith to institute
37 appropriate proceedings for the collection of the full amount of said bond. Upon request of such
38 prosecuting attorney, the commissioner shall deliver the bond to him. Willful refusal without just
39 cause therefor by the prosecuting attorney to perform said duty hereby imposed shall subject him
40 or her to removal from office by the circuit court of the county for which said prosecuting attorney
41 was elected upon proper proceedings and proof in the manner provided by law.

§11-16-17a. Commissioner to investigate, review, and approve or deny franchise agreements, labels, brands, and line extensions.

- 1 (a) The commissioner shall investigate and review:
- 2 (1) All franchise agreements and any amendments to a franchise agreement to verify
3 compliance with this article and the promulgated rules.
- 4 (2) The registration of all container labels for brands manufactured, imported or sold in
5 West Virginia, as further specified in §11-16-10(g) of this code.
- 6 (3) The registration of all brands and line extensions with the commissioner that are the
7 subject of a franchise agreement or an amendment to a franchise agreement.
- 8 (4) The appointment of all brands or line extensions to a distributor in a brewer's
9 established franchise distributor network and to that distributor's assigned territory from the
10 brewer.
- 11 (5) The appointment of all brands or line extensions acquired by a brewer as either an
12 acquiring brewer, successor brewer and also any successor entities of a brewer, as specified in
13 §11-16-21(a)(3) of this code, to the distributor in the selling brewer's established franchise
14 distributor network and to that distributor's assigned territory.

15 (b) The commissioner's investigation and review under subsection (a) of this section may
16 include, but is not limited to: the brewer, its subsidiaries, parent entities, contracted entities,
17 affiliated entities, associated entities or any other related entities, the brewer's corporate structure,
18 the nature of the relatedness of various entities, ownership, trade names or partial trade names,
19 logos, copyrights, trademarks or trade design, product codes, marketing and advertising,
20 promotion or pricing.

1 (c) The commissioner may approve or deny any item listed in subsection (a) of this section
2 as determined by the commissioner in accordance with this article, the promulgated rules as the
3 facts and circumstances dictate.

4 (d) Any brewer adversely affected by a denial as specified in subdivision (3) or (4),
5 subsection (a) of this section, may request, in writing, a final written determination from the
6 commissioner.

7 (e) Upon receipt of final determination as provided in subsection (d) (of this section, a
8 brewer may request an administrative hearing by filing a written petition and as otherwise required
9 per §11-16-24 of this code and the rules promulgated by the commissioner. Upon filing a written
10 petition, the brewer shall file a \$1,000 hearing deposit, via certified check or money order, to cover
11 the costs of the hearing. Such certified check or money order shall be made payable to the
12 commissioner. In any such hearing held by the request of a brewer, the burden of proof is on the
13 brewer and the standard of review for the administrative hearing is by a preponderance of the
14 evidence.