

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2124

BY DELEGATES FLEISCHAUER AND FAST

[Introduced February 10, 2021; 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:

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, and that the
 4 applicant is 21 years of age. If the applicant is a firm, association, partnership, limited partnership,
 5 limited liability company, or corporation, the application shall include the residence of the
 6 members or officers. If a person, firm, partnership, limited partnership, limited liability company,
 7 association, corporation, or trust applies for a license as a distributor, the person, or in the case
 8 of a firm, partnership, limited partnership, limited liability company, association or trust, the
 9 members, officers, trustees or other persons in active control of the activities of the limited liability
 10 company, association or trust relating to the license, shall include the residency for these persons
 11 on the application. All applicants and licensees must include a manager on the applicant's license
 12 application, or a licensee's renewal application who must meet all other requirements of licensure,
 13 including, but not limited to, United States citizenship or naturalization, passing a background
 14 investigation, being at least 21 years of age, being a suitable person, being of good morals and

15 character, and other requirements, all as set forth in this article and the rules, promulgated
16 thereunder, all in the interest of protecting public health and safety and being a suitable applicant
17 or licensee. In order to maintain licensure, a licensee shall notify the commissioner immediately
18 of a change in managers. If the applicant is a trust or has a trust as an owner, the trustees, or
19 other persons in active control of the activities of the trust relating to the license shall provide a
20 certification of trust as described in §44D-10-1013 of this code. This certification of trust shall
21 include the excerpts described in §44D-10-1013(e), of this code and shall further state, under
22 oath, the names, addresses, Social Security numbers and birth dates of the beneficiaries of the
23 trust and certify that the trustee and beneficiaries are 21 years of age or older. If a beneficiary is
24 not 21 years of age, the certification of trust must state that the beneficiary's interest in the trust
25 is represented by a trustee, parent, or legal guardian who is 21 years of age and who ~~will~~ shall
26 direct all actions on behalf of the beneficiary related to the trust with respect to the distributor until
27 the beneficiary is 21 years of age. Any beneficiary who is not 21 years of age or older shall have
28 his or her trustee, parent, or legal guardian include in the certification of trust and state under oath
29 his or her name, address, Social Security number, and birth date;

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

41 naturalized, each of whom ~~must~~ shall qualify and sign the application;

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~~ the 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 ; and

60 (9) That the applicant has general liability insurance coverage of not less than \$100,000
61 per occurrence and nonintoxicating beer liability or liquor insurance coverage of not less than
62 \$100,000 per occurrence, to cover liabilities arising out of a licensee's general business
63 operations. The applicant shall submit proof of coverage from each insurance coverage provider.
64 The commissioner, upon a finding that the liability insurance coverage is inadequate to cover
65 claims made against either type of policy, shall, by legislative rule, increase the minimum amounts
66 of insurance coverage for all applicants.

67 (b) ~~In the case of~~ If an applicant that is a trust or has a trust as an owner, a distributor
68 license may be issued only upon submission by the trustees or other persons in active control of
69 the activities of the trust relating to the distributor license of a true and correct copy of the written
70 trust instrument to the commissioner for his or her review. Notwithstanding any provision of law
71 to the contrary, the copy of the written trust instrument submitted to the commissioner pursuant
72 to this section is confidential and is not a public record and is not available for release pursuant
73 to the West Virginia Freedom of Information Act codified in §29B-1-1 *et seq.* of this code.

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

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

91 (1) That the applicant or manager is not a suitable person to be licensed;

92 (2) That the place to be occupied by the applicant is not a suitable place or is within 300

93 feet of any school or church measured from front door to front door along the street or streets.
 94 This requirement does not apply to a Class B licensee or to a place now occupied by a beer
 95 licensee so long as it is continuously so occupied. The prohibition against locating any such place
 96 within 300 feet of a school does not apply to a college or university that has notified the
 97 commissioner, in writing, that it has no objection to the location of any such place within 300 feet;

98 (3) That the manager, owner, employee, or person is in a contractual relationship to
 99 provide goods or services to the applicant is an active employee of the commissioner; or

100 (4) That the license should not be issued for reason of conduct declared to be unlawful by
 101 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 and residence of the applicant and list the same for its manager;

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

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

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

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

11 (6) A listed manager on the applicant's license application, or a licensee's renewal

12 application, and further that the manager shall meet all other requirements of licensure, including,
13 but not limited to, United States citizenship or naturalization, passing a background investigation,
14 being at least 21 years of age, being a suitable person, being of good morals and character, being
15 capable of operating a bona fide private club of good reputation in the community, and other
16 requirements, all as set forth in the code and the legislative rules, in order for the manager to be
17 able to meet and conduct any regulatory matters, including, but not limited to: Licensure or
18 enforcement matters related to the applicant or licensee all in the interest of protecting public
19 health and safety and being a suitable applicant or licensee. In order to maintain active licensure,
20 any change by a licensee in any manager listed on an application shall be made immediately to
21 the commissioner, in order to verify that the new manager meets licensure requirements;

22 (7) The name or names of any national organizations with which the applicant is affiliated
23 and the nature of the affiliation;

24 (8) The size and nature of the dining and kitchen facilities operated by applicant;

25 (9) Accurate and complete ownership information;

26 (10) An attestation that the information in the application is true and accurate; ~~and~~

27 (11) That the applicant has general liability insurance coverage of not less than \$100,000
28 per occurrence and nonintoxicating beer liability or liquor insurance coverage of not less than
29 \$100,000 per occurrence, to cover liabilities arising out of a licensee's general business
30 operations. The applicant shall submit proof of coverage from each insurance coverage provider.
31 The commissioner, upon a finding that the liability insurance coverage is inadequate to cover
32 claims made against either type of policy, shall, by legislative rule, increase the minimum amounts
33 of insurance coverage for all applicants; and

34 ~~(11)~~ (12) Such other information as the commissioner may reasonably require of the
35 applicant and manager which shall include, but not be limited to, the criminal records, if any, of
36 each member of the applicant's governing board or its officers and directors who have been
37 convicted of a felony or a crime involving moral turpitude.

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

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

47 (d) No license to operate a private club may be issued to applicants who discriminate
48 against any person or group of persons because of race or color of the person or group of persons.

NOTE: The purpose of this bill is to require licensees authorized to serve alcoholic liquors or nonintoxicating 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.