

WEST VIRGINIA CODE: §11-16-17A

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

(a) The commissioner shall investigate and review:

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

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

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

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

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

burden of proof is on the brewer and the standard of review for the administrative hearing is by a preponderance of the evidence.