WEST VIRGINIA CODE: §11-16-6e

§11-16-6e. License required for sale and shipment of nonintoxicating beer or nonintoxicating craft beer by a brewer or resident brewer; shipment of limited quantities of nonintoxicating beer or nonintoxicating craft beer; requirements; license fee; and penalties.

(a) *Authorization.* — Notwithstanding the provisions of this article or any other law to the contrary, any person that is currently licensed and in good standing in its domicile state as a brewer, resident brewer, other nonintoxicating beer or nonintoxicating craft beer manufacturer, and who also obtains a nonintoxicating beer or nonintoxicating craft beer direct shipper's license from the commissioner, as provided in this article, may sell and ship nonintoxicating beer or nonintoxicating craft beer brewed by the brewer, resident brewer, other nonintoxicating beer or nonintoxicating craft beer manufacturer by mail to a purchasing person who is 21 years of age or older, for personal use, and not for resale. A nonintoxicating beer or nonintoxicating craft beer direct shipper may ship nonintoxicating beer or nonintoxicating craft beer by mail to a purchasing person who is 21 years of age or older who purchases nonintoxicating beer or nonintoxicating craft beer, subject to the requirements of this article, in and throughout West Virginia. A nonintoxicating beer or nonintoxicating craft beer direct shipper may sell and ship nonintoxicating beer or nonintoxicating craft beer out of this state by mail to a purchasing person who is 21 years of age or older subject to the recipient state's or country's requirements, laws, and international laws.

(b) *License requirements.* — Before sending any shipment of nonintoxicating beer or nonintoxicating craft beer to a purchasing person who is 21 years of age or older, the nonintoxicating beer or nonintoxicating craft beer direct shipper must first:

(1) File a license application with the commissioner with the appropriate background check information, using forms required by the commissioner. Criminal background checks will not be required of applicants licensed in their state of domicile who can provide a certificate of good standing from their state of domicile;

(2) Pay to the commissioner the $250 non-prorated and nonrefundable annual license fee to ship and sell only nonintoxicating beer or nonintoxicating craft beer;

(3) Obtain a business registration number from the Tax Commissioner;

(4) Register with the office of the Secretary of State;

(5) Provide the commissioner a true copy of its current active license issued in the state of domicile, proving that the nonintoxicating beer or nonintoxicating craft beer direct shipper is licensed in its state of domicile as a brewer, resident brewer, or other nonintoxicating beer or nonintoxicating craft beer manufacturer;

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(6) Obtain from the commissioner a nonintoxicating beer or nonintoxicating craft beer direct shipper's license;

(7) Submit to the commissioner a list of all brands and labels of nonintoxicating beer or nonintoxicating craft beer to be shipped to West Virginia and attest that all nonintoxicating beer or nonintoxicating craft beer brands and labels are manufactured by the brewer, resident brewer or other nonintoxicating beer or nonintoxicating craft beer manufacturer seeking licensure and are not counterfeit or adulterated nonintoxicating beer or nonintoxicating craft beer;

(8) Attest that the brewer, resident, brewer or other nonintoxicating beer or nonintoxicating craft beer manufacturer brews less than 25,000 barrels of beer per calendar year and provide documentary evidence along with the attestation.

(9) Meet all other licensing requirements of this chapter and provide any other information that the commissioner may reasonably require.

(c) *Shipping Requirements*. — All nonintoxicating beer or nonintoxicating craft beer direct shipper licensees shall:

(1) Not ship more than a maximum of two, 24 bottle or can, cases of nonintoxicating beer or nonintoxicating craft beer based on a 12-fluid ounce bottle or can, however no combination of bottles or cans may exceed a total for the two cases of 576 fluid ounces of nonintoxicating beer residing in West Virginia, for such person's personal use and consumption, and not for resale.

(2) Not ship to any licensed brewers, resident brewers, retailers, retail liquor outlets, any type of private club, private caterers, private wine restaurants, private wine spas, private wine bed and breakfasts, wine retailers, wine specialty shops, taverns, or other licensees licensed under this article or chapter 60 of this code;

(3) Ensure that all containers of nonintoxicating beer or nonintoxicating craft beer shipped directly to a purchasing person who is 21 years of age or older are clearly and conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 OR OLDER REQUIRED FOR DELIVERY";

(4) Not ship nonintoxicating beer or nonintoxicating craft beer that has not been registered with the commissioner, register and pay any registration fees, and prove by documentation that the direct shipper has the rights from the manufacturer to ship the nonintoxicating beer or nonintoxicating craft beer;

(6) Not ship or deliver to:

(A) Any person under the age of 21;

(B) To an intoxicated person; or

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(C) To a person physically incapacitated due to the consumption of nonintoxicating beer or nonintoxicating craft beer, wine, or liquor, or the use of drugs;

(7) Obtain a written or electronic signature upon delivery to a person who the nonintoxicating beer or nonintoxicating craft beer direct shipper's carrier verifies in-person is at least 21 years of age or older, and if the carrier is not able to verify the age of the person and obtain that person's signature, then the carrier may not complete the delivery of the nonintoxicating beer or nonintoxicating craft beer shipment;

(8) Utilize a licensed and bonded shipping carrier who has obtained a transportation permit as specified in §60-6-12 of the code;

(9) First deliver any nonintoxicating beer or nonintoxicating craft beer shipment being shipped in and throughout West Virginia to the nonintoxicating beer or nonintoxicating craft beer brand's nearest appointed distributor who has the nonintoxicating beer or nonintoxicating craft beer brand's franchise territory located in the purchasing person's county of residence in West Virginia: *Provided*, That, if no distributor has been appointed for the nonintoxicating beer or nonintoxicating craft beer brand, then the brewer of the brand shall appoint a franchise distributor in the franchise territory where the purchasing person of the nonintoxicating beer or nonintoxicating craft beer resides;

(10) Have the appointed distributor complete any nonintoxicating beer or nonintoxicating craft beer shipment order with an in-person pickup, at the location of appointed distributor's distributorship, to the purchasing person subject to age and identity verification by the appointed distributor; *Provided*, That, the appointed distributor is not a retailer, and therefore cannot charge an additional fee for the in-person pickup for the nonintoxicating beer or nonintoxicating craft beer shipment as this would be considered a part of the service provided under the appointed distributor's franchise agreement.

(d) *Payment of Fees and Taxes. —*

(1) Any nonintoxicating beer or nonintoxicating craft beer direct shipper licensee must meet the markup requirements for retail sales set forth in §47-11A-6 of the code.

(2) Further, the nonintoxicating beer or nonintoxicating craft beer direct shipper licensee shall collect and remit all beer barrel tax, state sales tax, and local sales tax on the sale of nonintoxicating beer or nonintoxicating craft beer to the Tax Commissioner at the close of each month and file a monthly return, on a form provided by the Tax Commissioner, reflecting the taxes paid for all sales and shipments to persons residing in West Virginia. No nonintoxicating beer or nonintoxicating craft beer direct shipper shall pay any beer barrel or sales tax more than once.

(3) File monthly returns to the commissioner showing the total of nonintoxicating beer or nonintoxicating craft beer, by type, brand, sold, and shipped into West Virginia for the preceding month;

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(4) Permit the Tax Commissioner or commissioner or their designees to perform an audit of the nonintoxicating beer or nonintoxicating craft beer direct shipper's records upon request;

(5) The payment of fees to the commissioner and taxes to the Tax Commissioner may be in addition to fees and taxes levied by the nonintoxicating beer or nonintoxicating craft beer direct shipper's domicile state.

(6) No nonintoxicating beer or nonintoxicating craft beer direct shipper will be required to pay any fees to the commissioner or taxes to the Tax Commissioner more than once.

(e) *Jurisdiction.* — By obtaining a nonintoxicating beer or nonintoxicating craft beer direct shipper licensee the licensee shall be considered to have agreed and consented to the jurisdiction of the commissioner, which is Charleston, West Virginia and the Kanawha County circuit court, concerning enforcement of this chapter and any other related laws or rules.

(f) *Records and reports.* —

(1) Licensed nonintoxicating beer or nonintoxicating craft beer direct shippers must maintain accurate records of all shipments sent to West Virginia.

(2) Provide proof or records to the commissioner, upon request, that all direct shipments of liquor were purchased and delivered to a purchasing person who is 21 years of age or older.

(g) The nonintoxicating beer or nonintoxicating craft beer direct shipper may annually renew its license with the commissioner by application, paying the nonintoxicating beer or nonintoxicating craft beer direct shipper license fee and providing the commissioner with a true copy of a current brewer, resident brewer, or other nonintoxicating beer or nonintoxicating craft beer manufacturer's license from the nonintoxicating beer or nonintoxicating craft beer direct shipper's domicile state.

(h) The commissioner may promulgate rules to effectuate the purposes of this law.

(i) *Penalties.* —

(1) The commissioner may enforce the requirements of this chapter by administrative proceedings as set forth in §11-16-23 and §11-16-24 of this code to suspend or revoke a nonintoxicating beer or nonintoxicating craft beer direct shipper's license, and the commissioner may accept payment of a penalties as set forth in §11-16-23 and §11-16-24 of this code or an offer in compromise in lieu of suspension, at the commissioner's discretion. Hearings and appeals on such notices may be had in the same manner as in the case of revocations of licenses set forth in §11-16-23 and §11-16-24a of this code.

(2) If any licensee violates the provisions of this article, the commissioner may determine to suspend the privileges of the brewer, resident brewer, or other nonintoxicating beer or nonintoxicating craft beer manufacturer to sell, ship, or deliver nonintoxicating beer or

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nonintoxicating craft beer to a purchasing person who is 21 years of age or older or to the commissioner, or otherwise engage in the liquor business in this state for a period of one year from the date a notice is mailed to such person by the commissioner of the fact that such person has violated the provisions of this article. During such one-year period, it shall be unlawful for any person within this state to knowingly buy or receive nonintoxicating beer or nonintoxicating craft beer from such licensee or to have any dealings with such licensee with respect thereto.

(k) *Criminal Penalties*. — A shipment of nonintoxicating beer or nonintoxicating craft beer directly to citizens in West Virginia from persons who do not possess a valid nonintoxicating beer or nonintoxicating craft beer direct shipper's license is prohibited. Any person who knowingly makes, participates in, transports, imports, or receives such an unlicensed and unauthorized direct shipment of nonintoxicating beer or nonintoxicating craft beer is guilty of a felony and, shall, upon conviction thereof, be fined in an amount not to exceed $10,000 per violation. Without limitation on any punishment or remedy, criminal or civil, any person who knowingly makes, participates in, transports, imports, or receives such a direct shipment constitutes an act that is an unfair trade practice.

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