WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED

HOUSE BILL No. 907

(By Mr. Boiassay and Mr. Greene)

PASSED ________________ January 20, 1967

In Effect ________________ Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-11-67
AN ACT to amend and reenact sections twelve and thirteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the form of application for a license under said article, the fee and bond therefor, the refusal of licenses, and unlawful acts of persons holding a license as a retailer, distributor or brewer of nonintoxicating beer and providing penalties therefor.

Be it enacted by the Legislature of West Virginia:

That sections twelve and thirteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 16. NONINTOXICATING BEER.

§11-16-12. Form of application for license; fee and bond; refusal of license.

A license may be issued by the commissioner to any person who submits an application therefor, accompanied by a license fee, and, where required, a bond, stating under oath:

(a) The name and residence of the applicant, how long he has resided there, that he has been a resident of the state for a period of two years next preceding the date of his application, that he is twenty-one years of age, and, if a firm, association, partnership or corporation, the residence of the members or officers for a period of two years next preceding the date of such application:

Provided, That if any person, firm, partnership, association or corporation applies for a license as a distributor, such person, or in the case of a firm, partnership, association, the members or officers thereof, shall state under oath that he or they have been bona fide residents of the state for four years preceding the date of such application;
(b) The place of birth of applicant and that he is a citizen of the United States and, if a naturalized citizen, when and where naturalized; and, if a corporation, organized or authorized to do business under the laws of the state, when and where incorporated, with the name and address of each officer; that each officer is a citizen of the United States and a person of good moral character; and if a firm, association or partnership, the place of birth of each member of the firm, association or partnership, that each member is a citizen of the United States and if a naturalized citizen, when and where naturalized, each of whom must qualify and sign the application: Provided, however, That the requirements as to residence shall not apply to the officers of a corporation which shall apply for a Class B retailer's license, but the officers, agent, or employee who shall manage and be in charge of the licensed premises shall possess all of the qualifications required of an individual applicant for a retailer's license, including the requirement as to residence;
(c) The particular place for which the license is desired and a detailed description thereof;

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

(e) That the place or building in which it is proposed to do business conforms to all laws of health and fire regulations applicable thereto, and is a safe and proper place or building, and is not within three hundred feet of any school or church, measured from front door to front door, along the street or streets: Provided, That this requirement shall not apply to a Class B licenses, or to any place now occupied by a beer licensee, so long as it is continuously so occupied: Provided, however, That the prohibition against locating any such proposed business in a place or building within three hundred feet of any school shall not apply to any college or university that has notified the commissioner, in writing, that it has no objection to the location of any such proposed business in a place or building within three hundred feet of such college or university;
(f) That the applicant has never been convicted of a felony, or a violation of the liquor laws either federal or state;

(g) That the applicant is the only person in any manner pecuniarily interested in the business so asked to be licensed, and that no other person shall be in any manner pecuniarily interested therein during the continuance of the license;

(h) That the applicant has not during five years next immediately preceding the date of said application had a nonintoxicating beer license revoked, nor during the same period been convicted of any criminal offense.

The foregoing provisions and requirements are mandatory prerequisites for the issuance of a license, and in the event any applicant fails to qualify under the same, license shall be refused. In addition to the information furnished in any application, the commissioner may make such additional and independent investigation of each applicant, and of the place to be occupied, as deemed necessary or advisable; and for this reason each and all applications, with license fee and bond, must be filed
thirty days prior to the beginning of any fiscal year, and
if application is for an unexpired portion of any fiscal
year, issuance of license may be withheld for such rea-
sonable time as necessary for investigation.
The commissioner may refuse a license to any appli-
cant under the provisions of this article if he shall be
of the opinion:
(a) That the applicant is not a suitable person to be
licensed; or,
(b) That the place to be occupied by the applicant
is not a suitable place; or is within three hundred feet
of any school or church, measured from front door to
front door along the street or streets: Provided, That
this requirement shall not apply to a Class B licensee,
or to any place now occupied by a beer licensee, so long
as it is continuously so occupied: Provided, however,
That the prohibition against locating any such place to
be occupied by an applicant within three hundred feet
of any school shall not apply to any college or university
that has notified the commissioner, in writing, that it
has no objection to the location of any such place within
three hundred feet of such college or university; or,
(c) That the license should not be issued for reason
of conduct declared to be unlawful by this article.

§11-16-13. Unlawful acts of licensees; penalties.

It shall be unlawful:

(a) For any licensee, his, its or their servants, agents
or employees to sell, give or dispense, or any individual
to drink or consume, in or on any licensed premises or
in any rooms directly connected therewith, nonintoxicating
beer between the hours of midnight and seven
o'clock the following morning on week days or before
one o'clock in the afternoon of any Sunday, except in
private clubs licensed under the provisions of article
seven, chapter sixty of this code, where the hours shall
conform with the hours of sale of alcoholic liquors;
(b) For any licensee, his, its or their servants, agents
or employees, to sell, furnish or give any nonintoxicating
beer to any person visibly or noticeably intoxicated, or
to any insane persons, or to any habitual drunkard, or
to any person under the age of eighteen years;
(c) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer except for cash; and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this clause. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for such containers when title is retained by the vendor;

(d) For any brewer or distributor or his, its or their agents, to transport or deliver nonintoxicating beer to any retail licensee on Sunday;

(e) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail, or to offer any prize, premium, gift, or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: Provided, however,
That nothing contained herein shall prohibit a distributor from offering for sale or renting tanks of carbonic gas;

(f) For any licensee to transport, sell, deliver or purchase any nonintoxicating beer or product of the brewing industry upon which there shall appear a label or other informative data which in any manner refers to the alcoholic content of such beer or product of the brewing industry, or upon the label of which there appears the word or words "strong," "full strength," "extra strength," "prewar strength," "high test" or other similar expressions bearing upon the alcoholic content of such product of the brewing industry, or which refers in any manner to the original alcoholic strength, extract or balling proof from which such beverage was produced, except that such label shall contain a statement that the alcoholic content thereof does not exceed three and two-tenths per cent by weight;

(g) For any licensee to permit in his premises any lewd, immoral or improper entertainment, conduct or practice;

(h) For any licensee except the holder of a license
to operate a private club issued under the provisions of article seven, chapter sixty of this code to possess a federal license, tax receipt or other permit entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks;

(i) For any licensee to obstruct the view of the interior of his premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying such premises. The interior of all licensed premises shall be adequately lighted at all times: Provided, however, That provisions of this paragraph shall not apply to the premises of a Class B retailer or to the premises of a private club licensed under the provisions of article seven, chapter sixty of this code;

(j) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith: Provided, however, That the prohibitions contained in this paragraph with respect to the selling or possessing or to the acqui-
escence in the sale, possession or consumption of alcoholic liquors shall not be applicable with respect to the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code;

(k) For any licensee to print, paint or place upon the door, window, or in any other public place in or about the premises, the word "saloon" or word of similar character or nature, or for the word "saloon" or similar words to be used in any advertisement by the licensee;

(l) For any retail licensee to sell or dispense non-intoxicating beer purchased or acquired from any source other than a licensed distributor or brewer under the laws of this state;

(m) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his premises or to permit the use of loud musical instruments if either or any of same may disturb the peace and quietude of the community wherein such business is located: Provided, That no licensee shall have in connection with his place of business any loud speaker located on the outside of
the licensed premises that broadcasts or carries music
of any kind.

(n) For any person whose license has been revoked, as in this article provided, to obtain employment with any retailer within the period of one year from the date of such revocation, or for any retailer to employ knowingly any such person within such time;

(o) For any distributor to sell, possess for sale, transport or distribute nonintoxicating beer except in the original container;

(p) For any licensee to permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state;

(q) For any Class B retailer to permit the consumption of nonintoxicating beer upon his licensed premises;

(r) For any licensee, his, its or their servants, agents, or employees, or for any licensee by or through such servants, agents or employees, to allow, suffer or permit any person under the age of eighteen years to loiter in or upon any licensed premises; except, however, that the provisions of this subsection shall not apply where
Such person under the age of eighteen years, is in, on or upon such premises in the immediate company of his or her parent or parents, or where and while such person under the age of eighteen years is in, on or upon such premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on such premises.

Any person who violates any provision of this article or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful, shall be guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or imprisoned in the county jail for not less than thirty days or more than six months, or by both fine and imprisonment in the discretion of the
Justices of the peace shall have concurrent jurisdiction with the circuit court, and any other courts having criminal jurisdiction in their county, for the trial of all misdemeanors arising under this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompos  
Chairman Senate Committee

Clayton C. Davison  
Chairman House Committee

Originated in the House.

Takes effect from passage.

J. Holland Hay  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

Howard McCanan  
President of the Senate

N. Lakin White  
Speaker House of Delegates

The within ........................................... this the 11th day of March, 1967.

Herbert C. Smith  
Governor