

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967



ENROLLED

HOUSE BILL No. 907

(By Mr. Boiansky and Mr. Sewer)



PASSED February 20 1967

In Effect from Passage



FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-11-67

#907

ENROLLED
House Bill No. 907

(By MR. BOIARSKY and MR. GREWE)

[Passed February 25, 1967; in effect from passage.]

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; re-
fusal of license.**

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

5 (a) The name and residence of the applicant, how
6 long he has resided there, that he has been a resident
7 of the state for a period of two years next preceding the
8 date of his application, that he is twenty-one years of
9 age, and, if a firm, association, partnership or corpora-
10 tion, the residence of the members or officers for a period
11 of two years next preceding the date of such application:
12 *Provided*, That if any person, firm, partnership, associa-
13 tion or corporation applies for a license as a distributor,
14 such person, or in the case of a firm, partnership, associa-
15 tion, the members or officers thereof, shall state under
16 oath that he or they have been bona fide residents of the
17 state for four years preceding the date of such appli-
18 cation;

19 (b) The place of birth of applicant and that he is a
20 citizen of the United States and, if a naturalized citizen,
21 when and where naturalized; and, if a corporation, or-
22 ganized or authorized to do business under the laws of
23 the state, when and where incorporated, with the name
24 and address of each officer; that each officer is a citizen
25 of the United States and a person of good moral charac-
26 ter; and if a firm, association or partnership, the place
27 of birth of each member of the firm, association or
28 partnership, that each member is a citizen of the United
29 States and if a naturalized citizen, when and where
30 naturalized, each of whom must qualify and sign the
31 application: *Provided, however,* That the requirements
32 as to residence shall not apply to the officers of a corpora-
33 tion which shall apply for a Class B retailer's license,
34 but the officers, agent, or employee who shall manage
35 and be in charge of the licensed premises shall possess
36 all of the qualifications required of an individual appli-
37 cant for a retailer's license, including the requirement as
38 to residence;

39 (c) The particular place for which the license is
40 desired and a detailed description thereof;

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

44 (e) That the place or building in which it is pro-
45 posed to do business conforms to all laws of health and
46 fire regulations applicable thereto, and is a safe and proper
47 place or building, and is not within three hundred feet
48 of any school or church, measured from front door to
49 front door, along the street or streets: *Provided*, That
50 this requirement shall not apply to a Class B licenses,
51 or to any place now occupied by a beer licensee, so long
52 as it is continuously so occupied: *Provided, however*,
53 That the prohibition against locating any such proposed
54 business in a place or building within three hundred feet
55 of any school shall not apply to any college or university
56 that has notified the commissioner, in writing, that it
57 has no objection to the location of any such proposed
58 business in a place or building within three hundred feet
59 of such college or university;

60 (f) That the applicant has never been convicted of
61 a felony, or a violation of the liquor laws either fed-
62 eral or state;

63 (g) That the applicant is the only person in any
64 manner pecuniarily interested in the business so asked
65 to be licensed, and that no other person shall be in any
66 manner pecuniarily interested therein during the con-
67 tinuance of the license;

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

72 The foregoing provisions and requirements are manda-
73 tory prerequisites for the issuance of a license, and in the
74 event any applicant fails to qualify under the same,
75 license shall be refused. In addition to the information
76 furnished in any application, the commissioner may make
77 such additional and independent investigation of each
78 applicant, and of the place to be occupied, as deemed
79 necessary or advisable; and for this reason each and
80 all applications, with license fee and bond, must be filed

81 thirty days prior to the beginning of any fiscal year, and
82 if application is for an unexpired portion of any fiscal
83 year, issuance of license may be withheld for such rea-
84 sonable time as necessary for investigation.

85 The commissioner may refuse a license to any appli-
86 cant under the provisions of this article if he shall be
87 of the opinion:

88 (a) That the applicant is not a suitable person to be
89 licensed; or,

90 (b) That the place to be occupied by the applicant
91 is not a suitable place; or is within three hundred feet
92 of any school or church, measured from front door to
93 front door along the street or streets: *Provided*, That
94 this requirement shall not apply to a Class B licensee,
95 or to any place now occupied by a beer licensee, so long
96 as it is continuously so occupied: *Provided, however*,
97 That the prohibition against locating any such place to
98 be occupied by an applicant within three hundred feet
99 of any school shall not apply to any college or university
100 that has notified the commissioner, in writing, that it

101 has no objection to the location of any such place within
102 three hundred feet of such college or university; or,
103 (c) That the license should not be issued for reason
104 of conduct declared to be unlawful by this article.

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

1 It shall be unlawful:

2 (a) For any licensee, his, its or their servants, agents
3 or employees to sell, give or dispense, or any individual
4 to drink or consume, in or on any licensed premises or
5 in any rooms directly connected therewith, nonintoxi-
6 cating beer between the hours of midnight and seven
7 o'clock the following morning on week days or before
8 one o'clock in the afternoon of any Sunday, except in
9 private clubs licensed under the provisions of article
10 seven, chapter sixty of this code, where the hours shall
11 conform with the hours of sale of alcoholic liquors;

12 (b) For any licensee, his, its or their servants, agents
13 or employees, to sell, furnish or give any nonintoxicating
14 beer to any person visibly or noticeably intoxicated, or
15 to any insane persons, or to any habitual drunkard, or
16 to any person under the age of eighteen years;

17 (c) For any distributor to sell or offer to sell, or any
18 retailer to purchase or receive, any nonintoxicating beer
19 except for cash; and no right of action shall exist to
20 collect any claims for credit extended contrary to the
21 provisions of this clause. Nothing herein contained shall
22 prohibit a licensee from crediting to a purchaser the
23 actual price charged for packages or containers returned
24 by the original purchaser as a credit on any sale, or
25 from refunding to any purchaser the amount paid or
26 deposited for such containers when title is retained by
27 the vendor;

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

31 (e) For any brewer or distributor to give, furnish, rent
32 or sell any equipment, fixtures, signs or supplies directly
33 or indirectly or through a subsidiary or affiliate to any li-
34 censee engaged in selling products of the brewing industry
35 at retail, or to offer any prize, premium, gift, or other simi-
36 lar inducement, except advertising matter of nominal val-
37 ue, to either trade or consumer buyers: *Provided, however,*

38 That nothing contained herein shall prohibit a distributor
39 from offering for sale or renting tanks of carbonic gas;

40 (f) For any licensee to transport, sell, deliver or pur-
41 chase any nonintoxicating beer or product of the brewing
42 industry upon which there shall appear a label or other
43 informative data which in any manner refers to the
44 alcoholic content of such beer or product of the brewing
45 industry, or upon the label of which there appears the
46 word or words "strong," "full strength," "extra strength,"
47 "prewar strength," "high test" or other similar expres-
48 sions bearing upon the alcoholic content of such product
49 of the brewing industry, or which refers in any manner
50 to the original alcoholic strength, extract or balling proof
51 from which such beverage was produced, except that
52 such label shall contain a statement that the alcoholic
53 content thereof does not exceed three and two-tenths
54 per cent by weight;

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

58 (h) For any licensee except the holder of a license

59 to operate a private club issued under the provisions of
60 article seven, chapter sixty of this code to possess a
61 federal license, tax receipt or other permit entitling,
62 authorizing or allowing such licensee to sell liquor or
63 alcoholic drinks;

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

73 (j) For any licensee to manufacture, import, sell,
74 trade, barter, possess, or acquiesce in the sale, possession
75 or consumption of any alcoholic liquors on the premises
76 covered by such license or on premises directly or in-
77 directly used in connection therewith: *Provided, how-*
78 *ever,* That the prohibitions contained in this paragraph
79 with respect to the selling or possessing or to the acqu-

80 escence in the sale, possession or consumption of alco-
81 holic liquors shall not be applicable with respect to the
82 holder of a license to operate a private club issued under
83 the provisions of article seven, chapter sixty of this
84 code;

85 (k) For any licensee to print, paint or place upon the
86 door, window, or in any other public place in or about
87 the premises, the word "saloon" or word of similar char-
88 acter or nature, or for the word "saloon" or similar words
89 to be used in any advertisement by the licensee;

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

94 (m) For any licensee to permit loud, boisterous or
95 disorderly conduct of any kind upon his premises or to
96 permit the use of loud musical instruments if either or
97 any of same may disturb the peace and quietude of the
98 community wherein such business is located: *Provided,*
99 That no licensee shall have in connection with his place
100 of business any loud speaker located on the outside of

101 the licensed premises that broadcasts or carries music
102 of any kind.

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

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

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

114 (q) For any Class B retailer to permit the consump-
115 tion of nonintoxicating beer upon his licensed premises;

116 (r) For any licensee, his, its or their servants, agents,
117 or employees, or for any licensee by or through such ser-
118 vants, agents or employees, to allow, suffer or permit
119 any person under the age of eighteen years to loiter
120 in or upon any licensed premises; except, however, that
121 the provisions of this subsection shall not apply where

122 such person under the age of eighteen years, is in, on or
123 upon such premises in the immediate company of his or
124 her parent or parents, or where and while such person
125 under the age of eighteen years is in, on or upon such
126 premises for the purpose of and actually making a lawful
127 purchase of any items or commodities therein sold, or for
128 the purchase of and actually receiving any lawful service
129 therein rendered, including the consumption of any item
130 of food, drink or soft drink therein lawfully prepared and
131 served or sold for consumption on such premises.

132 Any person who violates any provision of this article
133 or who makes any false statement concerning any ma-
134 terial fact in submitting application for license or for a
135 renewal of a license or in any hearing concerning the
136 revocation thereof, or who commits any of the acts
137 herein declared to be unlawful, shall be guilty of a
138 misdemeanor, and shall be punished for each offense
139 by a fine of not less than twenty-five dollars, nor more
140 than five hundred dollars, or imprisoned in the county
141 jail for not less than thirty days or more than six months,
142 or by both fine and imprisonment in the discretion of the

143 court. Justices of the peace shall have concurrent juris-
144 diction with the circuit court, and any other courts having
145 criminal jurisdiction in their county, for the trial of all
146 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. Davidson

 Chairman House Committee

Originated in the House.

Takes effect from passage.

Thomas Thayer

 Clerk of the Senate

A. Blankenship

 Clerk of the House of Delegates

Howard E. Carson

 President of the Senate

N. Laska White

 Speaker House of Delegates

The within *approved* this the *11*
 day of *March*, 1967.

Hubert C. Smith

 Governor



PRESENTED TO THE
GOVERNOR

Date 3/7/67

Time 1:40pm