WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986

ENROLLED
Committee Substitute for
SENATE BILL NO. 536

(By Senator ...)

PASSED .................. March 8 .................. 1986
In Effect .................. July 1, 1986 .............. Passage
AN ACT to amend and reenact article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating nonintoxicating beer act; declaration of legislative findings, policy and intent; construction; definitions; office of nonintoxicating beer commissioner; deputies and agents; bonds; administration and enforcement expenses; state license required; alcoholic content of beer manufactured for sale without state; license in one capacity only; no connection between different licensees; when brewer may act as distributor; credit and rebates proscribed; license not transferable; change of location; form of application for license; fee and bond; refusal of license; amount of license tax; Class A and Class B retail dealers; purchase and sale of nonintoxicating beer permitted; brewer's license for foreign corporation; application; bond; contents of application; limitations; annual license fee; renewal; suspension; license fee for sales representatives; special license for festivals and fairs; license fee and application; license subject to provisions of article; exceptions; bond of brewer, distributor and Class A
retail dealer; action on bond of retail dealer upon revocation of license; duty of prosecuting attorney; barrel tax on nonintoxicating beer; collection of unpaid license tax; records of brewer, manufacturer or distributor; collection of unpaid tax and penalty; restrictions on nonresident brewers, manufacturers and distributors; container labeling; unlawful acts of licensees; criminal penalties; unlawful acts of persons; criminal penalties; unlawful acts of brewers or manufacturers; criminal penalties; requirements as to franchise agreements between brewers and distributors; transfer of franchise by distributor; notice thereof to brewer; arbitration of disputes as to such transfer; violations and penalties; limitation of section; powers of commissioner; rules, regulations or orders; revocation or suspension of license; hearing on revocation or suspension of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee; reissuance of license after revocation; municipal license tax; revenue collected and paid to state treasurer; expense of administration; expiration date of existing licenses; and when operable.

Be it enacted by the Legislature of West Virginia:

That 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.

§11-16-1. Short title.

This article shall be known and may be cited as "The Nonintoxicating Beer Act."

§11-16-2. Declaration of legislative findings, policy and intent; construction.

It is hereby found by the Legislature and declared to be the policy of this state that it is in the public interest to regulate and control the manufacture, sale, distribution, transportation, storage and consumption of the beverages regulated by this article within this state and that, therefore, the provisions of this article are a necessary, proper and valid exercise of the police powers of this state
and are intended for the protection of the public safety, welfare, health, peace and morals and are further intended to eliminate, or to minimize to the extent practicable, the evils attendant to the unregulated, unlicensed and unlawful manufacture, sale, distribution, transportation, storage and consumption of such beverages and are further intended to promote temperance in the use and consumption thereof. In order to further these ends, the provisions of this article and of the rules and regulations promulgated pursuant thereto, shall be construed so that the accomplishment of these stated purposes may be effectuated.

§11-16-3. Definitions.

For the purpose of this article, except where the context clearly requires differently:

1. "Brewer" or "manufacturer" shall mean any person, firm, association, partnership or corporation manufacturing, brewing, mixing, concocting, blending, bottling or otherwise producing or importing or transshipping from a foreign country nonintoxicating beer for sale at wholesale to any licensed distributor.

2. "Commissioner" shall mean the West Virginia nonintoxicating beer commissioner.

3. "Distributor" shall mean and include any person jobbing or distributing nonintoxicating beer to retailers at wholesale and whose warehouse and chief place of business shall be within this state.

4. "Nonintoxicating beer" shall mean all cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and containing at least one half of one percent alcohol by volume, but not more than four and two-tenths percent of alcohol by weight, or six percent by volume, whichever is greater, all of which are hereby declared to be nonintoxicating and the word "liquor" as used in chapter sixty of this code shall not be construed to include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.

5. "Original container" shall mean the container used
by the brewer at the place of manufacturing, bottling or
otherwise producing nonintoxicating beer for sale at
wholesale.

(6) "Person" shall mean and include an individual, firm,
partnership, limited partnership, association or
corporation.

(7) "Retailer" shall mean any person selling, serving or
otherwise dispensing nonintoxicating beer and all products
regulated by this article, including, but not limited to, any
malt cooler, at his established and licensed place of
business.

§11-16-4. Office of nonintoxicating beer commissioner;
deputies and agents; bonds; administration and
enforcement expenses.

(a) The office of the independent administrator known
as the "West Virginia Nonintoxicating Beer Commissioner"
is hereby continued and the administration of this article is
vested in and shall be exercised by said commissioner, to
whom is hereby given all necessary power and authority in
the premises.

All acts heretofore performed by the tax commissioner
under previous proceedings of this article are hereby again
ratified and confirmed, and the commissioner shall succeed
to the same position previously maintained by the tax
commissioner in all proceedings and official acts instituted
and perfected under the provisions of this article prior to
the creation of the office of commissioner in the year one
thousand nine hundred thirty-seven. The commissioner
shall be appointed by the governor with the advice and
consent of the Senate. Except as may be provided in section
two-a, article seven, chapter six of this code, the term of
office for such commissioner shall be six years from the date
of his or her appointment and until his or her successor shall
have been appointed and qualified. The commissioner shall
receive the annual salary as provided in said section two-a,
article seven, chapter six of this code.

(b) The commissioner, at the time of his or her
appointment and qualification, shall be a citizen of the
United States and a resident of the state of West Virginia
and shall have been a qualified voter in the state for a period
of at least one year next preceding his or her appointment
and shall be not less than thirty years of age. No commissioner, during his or her period of service as such, shall hold any other office under the laws of this state or of the United States.

(c) The commissioner, with the consent of the governor, shall appoint two deputy commissioners both of whom shall have the same qualifications as are required of the commissioner. One deputy commissioner shall be in charge of administration and the other deputy commissioner shall be in charge of law enforcement. The deputy commissioner of administration, in the absence of the commissioner, shall exercise all the powers of the commissioner and generally shall exercise such powers as are delegated to him or her by the commissioner. The deputy commissioner of law enforcement shall be, in the absence of the commissioner, responsible for and exercise all the powers of the commissioner in respect to law enforcement and regulation and shall generally exercise such powers as are delegated to him or her by the commissioner.

(d) Before entering upon the duties of their respective offices, the commissioner and the deputy commissioner shall execute and file with the state treasurer a penal bond in such sum as shall be fixed by the governor, but the amount of such bond shall not be less than five thousand dollars. Penal bonds in such penal sums as shall be fixed by the governor likewise shall be executed and filed with the state treasurer by such employees of the commissioner as the commissioner, with the consent of the governor, shall prescribe. No such bond of any employee handling moneys collected by the commissioner under the provisions of this article shall be less than five thousand dollars. All such bonds shall be payable to the state of West Virginia and shall be conditioned for the faithful performance of the duties imposed by law, or lawful authority upon the commissioner, deputy commissioners or employees, and further conditioned that the person bonded will not knowingly violate the provisions of any act, rule or regulation relating to the manufacture, sale, distribution or transportation of alcohol, alcoholic liquors or intoxicating beer. All bonds required to be given under this section, before being accepted by the state treasurer, shall be approved by the attorney general and all such bonds shall
be given with surety approved by the attorney general. The
cost of such bond shall be borne by the commissioner as part
of his operating expense.
(e) In addition to the service of the deputy
commissioners hereinabove provided for, the commissioner
shall appoint an adequate number of competent persons to
serve as agents of the commissioner for the purpose of
keeping all necessary accounts and records required under
the provisions of this article; investigating the books,
accounts, records and other papers of retailers, distributors
and brewers; investigating applicants for license and the
places of business of retailers, distributors and brewers;
procuring evidence with respect to violations of the
provisions of this article, and particularly for use at
hearings held by the commissioner and on proceedings
instituted in court for the purpose of revoking or
suspending licenses hereunder; and such agents shall
perform such other duties as the commissioner may direct.
Such agents shall have the right to enter any licensed
premises in the state in the performance of their duties at
any hour of the day or night when beer is being sold or
consumed on such licensed premises. Refusal by any
licensee or by any employee of a licensee to permit such
agents to enter the licensed premises shall be an additional
cause for revocation or suspension of the license of such
licensee by the commissioner. The compensation of such
deputy commissioners, employees and agents shall be fixed
by the commissioner.
(f) Services rendered the state by clerks, sheriffs,
commissioners in chancery and special commissioners,
designated by the court, and court reporters and
stenographers performing services for said commissioner
and fees of witnesses summoned on behalf of the state in
proceedings to revoke or suspend retailer's licenses, shall be
treated as part of the expenses of administration and
enforcement, and such officers and said other persons shall
be paid the same fees and charges as would be chargeable
for like services performed for an individual; and the
compensation of such clerks, sheriffs and other persons
shall be paid out of the amount allocated for the expense of
administration enforcement, after the amount of such fees
and other charges shall be certified by the court to the
auditor.
§11-16-5. State license required; alcoholic content of beer manufactured for sale without state.

No person shall manufacture, sell, possess for sale, transport or distribute nonintoxicating beer except in accordance with the provisions of this article, and after first obtaining a state license therefor, as provided in this article. Nothing contained in this article shall prohibit any brewer located within the state from manufacturing or transporting for sale without the state beer of an alcoholic strength greater than that of nonintoxicating beer.

§11-16-6. License in one capacity only; no connection between different licensees; when brewer may act as distributor; credit and rebates proscribed.

(a) No person shall be licensed in more than one capacity under the terms of this article, and there shall be no connection whatsoever between any retailer or distributor or brewer, and no person shall be interested directly or indirectly through the ownership of corporate stock, membership in a partnership, or in any other way in the business of a retailer, if such person is at the same time interested in the business of a brewer or distributor. A brewer whose place of brewing or manufacture is located within the state of West Virginia may act as distributor of his own product from such brewery, place of manufacture or bottling, but must have a distributor's license for distribution from a place other than the place of brewing or manufacture. A resident brewer or distributor may sell to a consumer for personal use and not for resale, draught beer in quantities of one-eighth, one-fourth and one-half barrels in the original containers.

(b) It shall be unlawful for any brewer, manufacturer or distributor to assist any retailer or for any retailer to accept assistance from any brewer, manufacturer or distributor any gifts or loans or forebearance of money or property of any kind, nature or description, or other thing of value or by the giving of any rebates or discounts of any kind whatsoever except as may be permitted by rule, regulation, or order promulgated by the commissioner in accordance with this article.

§11-16-7. License not transferable; change of location.

No license issued under the provisions of this article shall
be transferred to another person, nor shall the location of the premises to which the license relates be changed without the written consent of the commissioner, which consent may be given or refused, in his or her discretion.

§11-16-8. Form of application for license; fee and bond; refusal of license.

(a) 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:

(1) The name and residence of the applicant, the duration of such residency, that the applicant has been a resident of the state for a period of two years next preceding the date of the application and that the applicant is twenty-one years of age. If the applicant is a firm, association, partnership, limited partnership or corporation, the application shall include 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, limited partnership, association or corporation applies for a license as a distributor, such person, or in the case of a firm, partnership, limited partnership or association, the members or officers thereof shall state under oath that each has been a bona fide resident of the state for four years preceding the date of such application;

(2) The place of birth of applicant, that he or she is a citizen of the United States and of good moral character 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, partnership or limited partnership, the place of birth of each member of the firm, association, partnership or limited partnership, and 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, that the requirements as to residence shall not apply to the officers of a corporation which shall apply for a 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;

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

(4) 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;

(5) That the place or building in which is proposed to do
business conforms to all laws of health, fire and zoning
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 license, 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;

(6) That the applicant has never been convicted of any
felony, nor of any violation of the liquor laws, either federal
or state;

(7) 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; and

(8) That the applicant has not during five years next
immediately preceding the date of said application had a
nonintoxicating beer license revoked;

(b) The provisions and requirements of subsection
(a) of this section are mandatory prerequisites for the
issuance, 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 addition 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 reasonable
time as necessary for investigation.

(c) The commissioner may refuse a license to any
applicant under the provisions of this article if the
commissioner shall be of the opinion:

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

(2) 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 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

(3) That the license should not be issued for reason of
conduct declared to be unlawful by this article.

§11-16-9. Amount of license tax; Class A and Class B retail
dealers; purchase and sale of nonintoxicating
beer permitted.

(a) There is hereby levied and imposed an annual license
tax upon all dealers in and of nonintoxicating beer as
defined by this article, which license period shall begin on
the first day of July of each year and end on the thirtieth day
of June of the following year, and, if granted for a lesser
period, the same shall be computed semiannually in
proportion to the remainder of the fiscal year as follows:

(1) Retail dealers shall be divided into two classes, Class
A and Class B. In the case of a Class A retail dealer the
license fee shall be one hundred fifty dollars for each place
of business; the license fee for social, fraternal or private
clubs not operating for profit, and having been in
continuous operation for two years or more immediately
preceding the date of application, shall be one hundred fifty
dollars: Provided, That railroads operating in this state
may dispense nonintoxicating beer upon payment of an
annual license tax of ten dollars for each dining, club or
buffet car in which the same is dispensed.

Class A licenses issued for railroad dining, club or buffet
cars, as herein provided, shall authorize the licensee to sell
nonintoxicating beer at retail for consumption only on the
licensed premises where sold. All other Class A licenses
shall authorize the licensee to sell nonintoxicating beer at
retail for consumption on or off the licensed premises.

In the case of a Class B retailer, the fee for a Class B
license authorizing the sale of both chilled and unchilled
beer shall be one hundred fifty dollars for each place of
business. A Class B license shall authorize the licensee to
sell nonintoxicating beer at retail in bottles, cans or other
sealed containers only, and only for consumption off the
licensed premises. Sales under this license to any person at
any one time must be in less quantities than five gallons:
Provided, That a Class B retailer may sell to a consumer, for
personal use and not for resale, draught beer in quantities of
one-eighth, one-fourth and one-half barrels in the original
containers. Such license may be issued only to the
proprietor or owner of a grocery store. For the purpose of
this article, the term "grocery store" means and includes
any retail establishment commonly known as a grocery
store or delicatessen, where food or food products are sold
for consumption off the premises, and shall include and
mean a separate and segregated portion of any other retail
store which is dedicated solely to the sale of food, food
products and supplies for the table for consumption off the
premises. The commissioner may promulgate rules and
regulations necessary to carry this provision into effect.

(2) In the case of distributors, the license fee shall be one
thousand dollars for each place of business.

(3) In the case of a brewer with its principal place of
business located in this state, the license fee shall be one
thousand five hundred dollars for each place of
manufacture.
§11-16-10. **Brewer's license for foreign corporation; application; bond; contents of application; limitations; annual license fee; renewal; suspension; license fee for sales representatives.**

(a) A brewer's license shall be issued by the commissioner to a foreign corporation which submits an application therefor accompanied by the license fee hereinafter prescribed, the bond required by section nine of this article, a certified copy of the certificate of authority issued by the secretary of state authorizing such foreign corporation to transact business in the state and a certified copy of its most recent corporation charter. Such application shall be verified and shall state:

1. The name of the corporation and the state under the laws of which it is incorporated;
2. The date of incorporation;
3. The address of the principal office of the corporation;
4. The names and respective addresses of the directors and officers of the corporation;
5. The date that such foreign corporation qualified to transact business in this state; and
6. Such other information as the commissioner, by rule or regulation, may require.

(b) So long as the foreign corporation remains qualified to transact business in this state so that the secretary of state can accept service of notice and process for such foreign corporation, then, notwithstanding any other provision of this article to the contrary, none of the officers and directors of such foreign corporation need be residents of this state.

(c) The license fee for a brewer's license for a foreign corporation selling any nonintoxicating beer product within this state, whether or not its principal place of business be located in this state, shall be one thousand five hundred dollars per annum. The license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following year and, if granted for a lesser period, the same shall be prorated semiannually in proportion to the remainder of the fiscal year.

(d) All sales representatives for any brewer or
manufacturer of nonintoxicating beer shall be issued a
permit by the commissioner. The permit fee for each sales
representative of or employed by a licensed brewer or
manufacturer shall be fifty dollars.

(e) The licenses and permits issued under the provisions
of this section shall be renewed annually upon application
for renewal on a form prescribed by the commissioner and
payment of the annual license fee.

(f) If at any time such foreign corporation is no longer
qualified to transact business in this state, the secretary of
state shall notify the commissioner of such fact and the
commissioner shall thereupon suspend the brewer's license
issued to such foreign corporation until such time as such
foreign corporation has again qualified to transact business
in this state and has otherwise complied with the provisions
of this section.

(g) Notwithstanding any other provision of this article
to the contrary, any corporation issued a brewer's license
under the provisions of this article shall not engage in the
business of a distributor or retailer as defined in this article.

§11-16-11. Special license for festivals and fairs; license fee
and application; license subject to provisions of
article; exceptions.

The commissioner may issue a special license, to be
designated a Class S license, for the retail sale of
nonintoxicating beer at a festival or fair, provided the
festival or fair is sponsored or endorsed by the governing
body of either the municipality or of the county wherein the
festival or fair is to be conducted. Such special license shall
be issued for a term of no longer than ten consecutive days
and the fee therefor shall be two hundred fifty dollars
regardless of the term of the license. The application for
such license shall contain such information as the
commissioner may require and shall be submitted to the
commissioner at least thirty days prior to the first day upon
which nonintoxicating beer is to be sold at such festival or
fair.

A license issued under the provisions of this section and
the licensee holding such license shall be subject to all other
provisions of this article and the rules, regulations and
orders of the commissioner relating to such special license:
Provided, That the commissioner may, by rule, regulation or order, provide for certain waivers or exceptions with respect to such provisions, rules, regulations or order, as the circumstances of each such festival or fair may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing, notwithstanding the provisions of section twenty-four of this article: Provided, however, That under no circumstances shall the provisions of subdivisions (1), (2) or (3), subsection (a), section eighteen of this article, be waived nor shall any exception be granted with respect thereto.

§11-16-12. Bond of brewer, distributor and Class A retail dealer; action on bond of retail dealer upon revocation of license; duty of prosecuting attorney.

(a) In addition to furnishing the information required by this article, each brewer or distributor applying for a license under this article shall furnish, as prerequisite to a license, a bond with some solvent surety company as surety, to be approved by the commissioner, payable to the state of West Virginia, conditioned for the payment of any and all additional taxes accruing during the period of such license, and conditioned further for the faithful observance of the provisions of this article, the rules, regulations and orders promulgated pursuant thereto and of any other laws of the state of West Virginia generally relating to the sale, transportation, storage and distribution of nonintoxicating beer, which said bonds shall be forfeited to the state upon the revocation of the license of any such brewer or distributor. The amount of such bond, in the case of a resident brewer, shall be not less than five thousand dollars, nor more than ten thousand dollars, and in the case of a distributor, not less than two thousand dollars, nor more than five thousand dollars for each place of business licensed and conducted within the state, the amount of such bond, between the minimum and maximum amounts, to be determined in the discretion of the commissioner. In the case of brewers shipping nonintoxicating beer into the state, any brewer must also furnish a bond in a penalty of not less than five thousand dollars nor more than twenty-
(a) There is hereby levied and imposed, in addition to
the license taxes provided for in this article, a tax of five
dollars and fifty cents on each barrel of thirty-one gallons
and in like ratio on each part barrel of nonintoxicating beer
manufactured in this state for sale within this state,
whether contained or sold in barrels, bottles or other
containers, and a like tax is hereby levied and imposed upon
all nonintoxicating beer manufactured outside of this state
and brought into this state for sale within this state; but no
nonintoxicating beer manufactured, sold or distributed in
this state is subject to more than one barrel tax. The brewer
manufacturing or producing nonintoxicating beer within
this state for sale within this state shall pay the barrel tax on
such nonintoxicating beer, and, except as provided
otherwise, the distributor who is the original consignee of
nonintoxicating beer manufactured or produced outside of
this state, or who brings such nonintoxicating beer into this
state, shall pay the barrel tax on such nonintoxicating beer
manufactured or produced outside of this state.

(b) On or before the tenth day of each month during the
license period, every brewer who manufactures or produces
nonintoxicating beer within this state shall file a report in
writing, under oath, to the commissioner, in the form
prescribed by the commissioner, stating its total estimated
sales of nonintoxicating beer to distributors within this
state during that month, and at the same time shall pay the
tax levied by this article on such estimated monthly sales.
On or before the tenth day of each month during the license
period, every distributor who is the original consignee of
nonintoxicating beer manufactured or produced outside
this state or who brings such beer into this state for sale
shall file a report in writing, under oath, to the
commissioner, in the form prescribed by the commissioner,
stating its total estimated purchases of such
nonintoxicating beer during that month, and at the same
time shall pay the tax thereon levied by this article for such
estimated monthly purchase: Provided, That the
commissioner may allow, or require, a brewer who
manufactures or produces nonintoxicating beer outside
this state to file the required report and pay the required tax
on behalf of its distributor or distributors. Any brewer or
distributor who files a report under this subsection may
adjust its monthly estimated sales or purchases report or
Every brewer or distributor who files a report under subsection (b) of this section shall file a final monthly report of said sales or purchases, in a form and at a time prescribed by the commissioner, stating actual nonintoxicating beer sales and purchases and other information which commissioner may require, and shall include a remittance for any barrel tax owed for actual sales or purchases made in excess of the amount estimated for that month.

(d) Any brewer or distributor who files a report pursuant to subsection (b) of this section reflecting an underestimation of twenty-five percent or more of actual sales or purchases of nonintoxicating beer as shown by the report filed pursuant to subsection (c) of this section, shall be assessed a penalty of one percent of the total taxes due in such prior month.

(e) Brewers and distributors shall keep all records which relate to the sale or purchase in this state of nonintoxicating beer for a period of three years unless written approval for earlier disposal is granted by the commissioner.


If any person whose report to the commissioner as provided for in section thirteen of this article shows him to be liable for any unpaid taxes, and who shall fail to pay the same as provided herein, the commissioner shall be authorized to distress immediately therefor, or collect the amount thereof in any appropriate legal proceeding instituted in the circuit court of Kanawha County, West Virginia, or in the circuit court of the county wherein the principal place of business of such person is located, as the commissioner may deem appropriate, and in addition the state shall have a lien on all the property of such person for the full amount of the unpaid tax as ascertained by the commissioner; and in addition the commissioner may revoke the license of any such person failing to pay any such tax.

§11-16-15. Records of brewer, manufacturer or distributor; collection of unpaid tax and penalty.

Every brewer, manufacturer or distributor shall
maintain, keep and preserve for a period of three years such
record or records of nonintoxicating beer manufactured,
sold or distributed in this state, including, but not limited
to, coolers, together with such invoices, records, receipts,
bills of lading and other pertinent papers as may be
required by the commissioner, and the commissioner shall
have authority to inspect, by himself or through his duly
designated agent, the books, accounts, records and
memoranda of any person licensed under the provisions of
this article, and to examine, under oath, any officer, agent
or employee of any brewer, manufacturer or distributor.
The commissioner may require the production, within this
state at such time and place as he may designate, of any
books, accounts, papers or records kept within or without
the state, or verified copies in lieu thereof, in order that an
examination thereof may be made by the commissioner or
his duly designated agents. If, as the result of such
examination, it shall be found that any nonintoxicating
beer, subject to the payment of a tax, has been
manufactured, brewed, sold or distributed by any person,
upon which the tax has not been paid, the commissioner
shall make an assessment of the amount of tax so found to
be due, and, in addition thereto and as a part thereof, shall
assess a penalty of fifty percent of the amount of such tax
and shall notify such person of the total amount due. If the
same remains unpaid for a period of thirty days, the
commissioner shall have the authority to revoke any license
held at the time by the licensee and, in addition thereon, to
collect the amount found to be due by an appropriate legal
proceeding in any of the circuit courts in which an action for
the collection of unpaid taxes may be maintained under
section fourteen of this article, unless an appeal is taken
from the action of the commissioner as hereinafter
provided.
Within ten days after receipt of notice of any additional
amount claimed to be due from any person as shown by an
examination by the commissioner, such person, if he or she
deems themselves aggrieved thereby, shall so notify the
commissioner and shall request a hearing thereon and the
commissioner shall set a hearing into the matters raised by
such notice, which hearing shall be held as a contested case
pursuant to article five, chapter twenty-nine-a of this code,
except that the licensee shall have the right of appeal from
the commissioner's findings only to the circuit court of
Kanawha County, West Virginia. Whether the finding of the
commissioner is affirmed or reversed, such circuit court
shall enter an order accordingly and either party shall then
have the right of appeal to the supreme court of appeals of
the state.

§11-16-16. Restrictions on nonresident brewers,
manufacturers and distributors.

No brewer or manufacturer whose chief place of business
is outside the state of West Virginia shall offer for sale or sell
nonintoxicating beer, in the state of West Virginia, or offer
any of the same for shipment into this state, except to a
distributor who is duly licensed under this article, and no
such brewer or manufacturer shall consign, ship or deliver
any of the same to any person within the state of West
Virginia, or sell and deliver the same outside the state of
West Virginia to be transported into the state of West
Virginia, except to a duly licensed distributor for delivery at
the place of business of such distributor as set forth in such
brewer's or manufacturer's license. No such brewer or
manufacturer shall have any interest in the business of any
distributor or retailer, nor be connected directly or
indirectly with any distributor or retailer. Every such
brewer or manufacturer shall mail to the commissioner on
or before the tenth day of each calendar month, a sworn
statement showing all such sales and shipments of
nonintoxicating beer made by such brewer or manufacturer
during the preceding calendar month. If any such brewer or
manufacturer shall violate any of the provisions of this
article or shall violate any of the rules, regulations or order
of the commissioner, such brewer or manufacturer shall be
punished in like manner as provided for any nonresident
brewer who shall violate any provisions of this section. If
any such brewer shall violate any of the provisions of this
article, he shall not be permitted to sell, ship or deliver any
nonintoxicating beer to any distributor or to otherwise
engage in any business authorized by this article for a
period of not to exceed one year from the date the notice
shall be mailed to such brewer or manufacturer by the
commissioner of the fact that such brewer or manufacturer
has violated the provisions of this article or such rules, regulations or orders of the commissioner. During such period of one year, it shall be unlawful for any distributor or manufacturer or for any other person within the jurisdiction of the state of West Virginia, to buy or receive from such brewer or manufacturer any nonintoxicating beer or have any dealings with such brewer or manufacturer with respect thereto. A distributor who has not qualified with residence requirements of this article or whose chief place of business is outside the state of West Virginia, shall not sell, ship, transport, convey or deliver or cause to be sold, shipped, transported, conveyed or delivered, directly or indirectly, any nonintoxicating beer to any distributor within the state of West Virginia. If any such distributor shall violate any of the provisions of this article, he shall be punished in like manner as provided for any nonresident brewer or manufacturer who shall violate any provisions of this section.

§11-16-17. Container labeling.

It shall be unlawful for any brewer, manufacturer, distributor or retailer to have affixed upon any beer, ale or other malt beverage or malt cooler container, sold or for sale in this state, a label bearing any design, picture or wording, indicating that the contents of the container are brewed or manufactured for one particular distributor or retailer or group of retailers, or use any trademark other than that of a licensed brewer or manufacturer.

§11-16-18. Unlawful acts of licensees; criminal penalties.

(a) It shall be unlawful:

(1) For any licensee, his, her, 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 or cooler on weekdays between the hours of two o'clock a.m. and seven o'clock a.m., or between the hours of two o'clock a.m. and one o'clock p.m., on 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;

(2) For any licensee, his, her, its or their servants, agents
or employees, to sell, furnish or give any nonintoxicating beer as defined in this article to any person visibly or noticeably intoxicated, or to any person known to be insane or known to be a habitual drunkard;

(3) For any licensee, his, her, its or their servants, agents or employees, to sell, furnish or give any nonintoxicating beer as defined in this article to any person who is less than twenty-one years of age;

(4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash; and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subdivision. 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;

(5) For any brewer or distributor or his, her, its or their agents, to transport or deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;

(6) 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, That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein contained shall prohibit a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any such events: Provided, however, That no such event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the commissioner;

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

(8) 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, or a holder of a license for a
private wine restaurant issued under the provisions of article eight of said chapter sixty, to possess a federal license, tax receipt or other permit entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;

(9) 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, That provisions of this subdivision shall not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of article seven, chapter sixty of this code, or the premises of a private wine restaurant licensed under the provisions of article eight of said chapter sixty;

(10) 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, That the prohibition contained in this subdivision with respect to the selling or possessing or to the acquiescence 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, nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of article eight of said chapter insofar as such private wine restaurant is authorized to serve wine;

(11) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased or acquired from any source other than a distributor, brewer or manufacturer licensed under the laws of this state;

(12) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his or her premises or to permit the use of loud musical instruments if either or any of the 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 or her place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind;
(13) 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;

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

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

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

(17) For any Class A licensee, his, her, 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 less than eighteen years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision shall not apply where such person under the age of eighteen years is in 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 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;

(18) For any distributor to sell, offer for sale, distribute or deliver any nonintoxicating beer outside the territory assigned to such distributor by the brewer or manufacturer of such nonintoxicating beer or to sell, offer for sale, distribute or deliver any such nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of such nonintoxicating beer: Provided, That nothing herein shall be deemed to prohibit sales of convenience between distributors licensed in this state wherein one such distributor sells, transfers or delivers to another such distributor a particular brand or brands for sale at wholesale; and

(19) For any licensee or any agent, servant or employee of any such licensee to knowingly violate any rule or
regulation lawfully promulgated by the commissioner in accordance with the provisions of chapter twenty-nine-a of this code.

(b) Any person who violates any provision of this article including, but not limited to, any provision of this section, or any rule, regulation, or order lawfully promulgated by the commissioner, 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 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 court. Magistrates 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.

(c) Nothing in this article nor any rule or regulation of the commissioner shall prevent or be deemed to prohibit any licensee from employing any person who is at least eighteen years of age to serve in such licensee's lawful employ, including the sale or delivery of nonintoxicating beer as defined in this article. With the prior approval of the commissioner, a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age: Provided, That such person's duties shall not include the sale or delivery of nonintoxicating beer or alcoholic liquors: Provided, however, That the authorization to employ such persons under the age of eighteen years shall be clearly indicated on the licensee's license.

§11-16-19. Unlawful acts of persons; criminal penalties.

(a) Any person under the age of twenty-one years who, for the purpose of purchasing nonintoxicating beer,
misrepresents his or her age, or who for such purpose
presents or offers any written evidence of age which is false,
 fraudulent or not actually his or her own, or who illegally
attempts to purchase nonintoxicating beer, is guilty of a
misdemeanor, and, upon conviction thereof, shall be fined
in an amount not to exceed fifty dollars or shall be
imprisoned in the county jail for a period not to exceed
seventy-two hours, or both such fine and imprisonment, or,
in lieu of such fine and imprisonment, may, for the first
offense, be placed on probation for a period not exceeding
one year.

(b) Any person who shall knowingly buy for, give to or
furnish nonintoxicating beer to anyone under the age of
twenty-one to whom they are not related by blood or
marriage is guilty of a misdemeanor and shall, upon
conviction thereof, be fined in an amount not to exceed one
hundred dollars or shall be imprisoned in the county jail for
a period not to exceed ten days, or both such fine and
imprisonment.

(c) Any person who at any one time transports into the
state for their personal use and not for resale, more than six
and seventy-five hundredths gallons of nonintoxicating
beer, upon which the West Virginia barrel tax has not been
imposed, shall be guilty of a misdemeanor and shall, upon
conviction thereof, be fined in an amount not to exceed one
hundred dollars, and have all the untaxed nonintoxicating
beer in their possession at the time of the arrest confiscated,
or imprisoned for ten days in the county jail, or both fined
and imprisoned.

If the Congress of the United States repeals the mandate
established by the Surface Transportation Assistance Act of
1982 relating to National Uniform Drinking Age of twenty-
one as found in section six of Public Law 98-363, or a court
of competent jurisdiction declares the provision to be
unconstitutional or otherwise invalid, it is the intent of the
Legislature that the provisions contained in this section and
section eighteen of this article which prohibit the sale,
furnishing, giving, purchase or ownership of
nonintoxicating beer to or by a person who is less than
twenty-one years of age shall be null and void and the
provisions therein shall thereafter remain in effect and
apply to the sale, furnishing, giving, purchase or ownership
of nonintoxicating beer to or by a person who is less than
nineteen years of age.
§11-16-20. Unlawful acts of brewers or manufacturers; criminal penalties.

(a) It shall be unlawful:

(1) For any brewer or manufacturer, or any other person, firm or corporation engaging in the business of selling nonintoxicating beer, ale or other malt beverage or cooler to a distributor or wholesaler, to discriminate in price, allowance, rebate, refund, commission, discount or service between distributors or wholesalers licensed in West Virginia. "Discriminate," as used in this section, shall mean the granting of more favorable prices, allowances, rebates, refunds, commissions, discounts or services to one West Virginia distributor or wholesaler than to another.

(2) For any brewer or manufacturer, or any other person, firm or corporation engaged in the business of selling nonintoxicating beer, ale or other malt beverage or malt cooler to a distributor or wholesaler, to sell or deliver nonintoxicating beer, ale or other malt beverage or malt cooler to any licensed distributor or wholesaler unless and until such brewer, manufacturer, person, firm or corporation, as the case may be, shall have filed the brewery or dock price of such beer, ale or other malt beverage or malt cooler, by brands and container sizes, with the commissioner. No price schedule shall be put into effect unless approved in writing by the commissioner. Any approval or disapproval of the same shall be made in writing within fourteen days after receipt by the commissioner. Any disapproval shall be subject to review under the provisions of article five, chapter twenty-nine-a of this code.

(b) The violation of any provision of this section by any brewer or manufacturer shall constitute grounds for the forfeiture of the bond furnished by such brewer or manufacturer in accordance with the provisions of section twelve of this article.

§11-16-21. Requirements as to franchise agreements between brewers and distributors; transfer of franchise by distributor; notice thereof to brewer; arbitration of disputes as to such transfer; violations and penalties; limitation of section.

(a) On and after July one, one thousand nine hundred
seventy-one, it shall be unlawful for any brewer to transfer
or deliver to a distributor any nonintoxicating beer, ale or
other malt beverage or malt cooler without first having
entered into an equitable franchise agreement with such
distributor, which franchise agreement shall be in writing,
shall be identical as to terms and conditions with all other
franchise agreements between such brewer and its other
distributors in this state, and which shall contain a
 provision in substance or effect as follows:

(1) The brewer recognizes that the distributor is free to
manage his business in the manner the distributor deems
best, and that this prerogative vests in the distributor,
subject to the provisions of this article, the exclusive right
to establish his or her selling prices, to select the brands of
beer he or she wishes to handle, and to determine the efforts
and resources which the distributor will exert to develop
and promote the sale of the brewer's products handled by
the distributor. However, since the brewer does not expect
that its products handled by the distributor will be sold by
others in the territory assigned to the distributor, the
brewer is dependent upon the distributor alone for the sale
of such products in said territory. Consequently, the brewer
expects that the distributor will price competitively the
products handled by the distributor, devote reasonable
effort and resources to the sale of such products and
maintain a satisfactory sales level.

(2) Whenever the manufacturing, bottling or other
production rights for the sale of nonintoxicating beer at
wholesale of any brewer is acquired by another brewer, the
franchised distributor of the selling brewer shall be entitled
to continue distributing the selling brewer's beer products
as authorized in the distributor's existing franchise
agreement, and the acquiring brewer shall market all the
selling brewer's beer products through said franchised
distributor as though the acquiring brewer had made the
franchise agreement, and the acquiring brewer may
terminate said franchise agreement only in accordance with
subdivision (2), subsection (b) of this section: Provided,
That the acquiring brewer may distribute any of its other
beer products through its duly authorized franchises in
accordance with all other provisions of this section.

(b) It shall also be unlawful:
(1) For any brewer or distributor, or any officer, agent or representative of any brewer or distributor, to coerce or persuade or attempt to coerce or persuade any person licensed to sell, distribute or job nonintoxicating beer, ale or other malt beverage or malt cooler at wholesale or retail, to enter into any contracts or agreements, whether written or oral, or to take any other action, which will violate or tend to violate any provision of this article or any of the rules, regulations, standards, requirements or orders of the commissioner promulgated as provided in section twenty-one of this article; or

(2) For any brewer or distributor, or any officer, agent or representative of any brewer or distributor, to cancel, terminate or rescind without due regard for the equities of such brewer or distributor, and without just cause, any franchise agreement, whether oral or written, and in the case of an oral franchise agreement, whether the same was entered into on or before the eleventh day of June, one thousand nine hundred seventy-one, and in the case of a franchise agreement in writing, whether the same was entered into on, before or subsequent to July one, one thousand nine hundred seventy-one. The cancellation, termination or rescission of any such franchise agreement shall not become effective for at least ninety days after written notice of such cancellation, termination or rescission has been served on the affected party and the commissioner by certified mail, return receipt requested: Provided, That said ninety-day period and said notice of cancellation, termination or rescission shall not apply if such cancellation, termination or rescission is agreed to in writing by both the brewer and the distributor involved.

(c) In the event a distributor desires to sell or transfer his or her franchise, such distributor shall give to the brewer at least sixty days notice in writing of such impending sale or transfer and the identity of the person, firm or corporation to whom such sale or transfer is to be made and such other information as the brewer may reasonably request. Such notice shall be made upon forms and contain such additional information as the commissioner by rule or regulation shall prescribe. A copy of such notice shall be forwarded to the commissioner. The brewer shall be given sixty days to approve or disapprove of such sale or transfer. If the brewer neither approves nor
disapproves thereof within sixty days of the date of receipt of such notice, the sale or transfer of such franchise shall be deemed to be approved by such brewer. In the event the brewer shall disapprove of the sale or transfer to the prospective franchisee, transferee or purchaser, such brewer shall give notice to the distributor of that fact in writing, setting forth the reason or reasons for such disapproval. The approval shall not be unreasonably withheld by the brewer. The fact that the prospective franchisee, transferee or purchaser has not had prior experience in the nonintoxicating beer business or beer business shall not be deemed sufficient reason in and of itself for a valid disapproval of the proposed sale or transfer, but may be considered in conjunction with other adverse factors in supporting the position of the brewer. Nor may the brewer impose requirements upon the prospective franchisee, transferee or purchaser which are more stringent or restrictive than those currently demanded of or imposed upon the brewer's other distributors in the state of West Virginia. A copy of such notice of disapproval shall likewise be forwarded to the commissioner and to the prospective franchisee, transferee or purchaser. In the event the issue be not resolved within twenty days from the date of such disapproval, either the brewer, distributor or prospective franchisee, transferee or purchaser shall notify the other parties of his or her demand for arbitration and shall likewise notify the commissioner thereof. A dispute or disagreement shall thereupon be submitted to arbitration in the county in which the distributor's principal place of business is located by a board of three arbitrators, which request for arbitration shall name one arbitrator. The party receiving such notice shall within ten days thereafter by notice to the party demanding arbitration name the second arbitrator, or failing to do so, the second arbitrator shall be appointed by the chief judge of the circuit court of the county in which the distributor's principal place of business is located on request of the party requesting arbitration in the first instance. The two arbitrators so appointed shall name the third, or failing to do so within ten days after appointment of the second arbitrator, the third arbitrator may be appointed by said chief judge upon request of either party.
The arbitrators so appointed shall promptly hear and determine the questions submitted pursuant to the procedures established by the American Arbitration Association and shall render their decision with all reasonable speed and dispatch but in no event later than twenty days after the conclusion of evidence. Said decision shall include findings of fact and conclusions of law and shall be based upon the justice and equity of the matter. Each party shall be given notice of such decision. If the decision of the arbitrators be in favor of or in approval of the proposed sale or transfer, the brewer shall forthwith agree to the same and shall immediately transfer the franchise to the proposed franchisee, transferee or purchaser, unless notice of intent to appeal such decision is given the arbitrators and all other parties within ten days of notification of such decision. If any such party deems himself aggrieved thereby, such party shall have a right to bring an appropriate action in circuit court. Any and all notices given pursuant to this subsection shall be given to all parties by certified or registered mail, return receipt requested.

(d) The violation of any provision of this section by any brewer shall constitute grounds for the forfeiture of the bond furnished by such brewer in accordance with the provisions of section twelve of this article. Moreover, any circuit court of the county in which a distributor's principal place of business is located shall have the jurisdiction and power to enjoin the cancellation, termination or rescission of any franchise agreement between a brewer and such distributor, and, in granting an injunction to a distributor, the court shall provide that the brewer so enjoined shall not supply the customers or territory of the distributor while the injunction is in effect.

§11-16-22. Powers of the commissioner; rules, regulations or orders.

(a) In addition to all other powers conferred upon the commissioner and in order to effectively carry out the provisions, intent and purposes of this article, the commissioner shall have the power and authority to adopt, promulgate, repeal, rescind and amend, in accordance with the provisions of chapter twenty-nine-a of this code, rules,
regulations, standards, requirements and orders, including,
but not limited to, the following:

(1) Prescribing records and accounts pertaining to the
manufacture, distribution and sales of nonintoxicating
beer, to be kept by the licensee and the form thereof;

(2) Requiring the reporting of such information by
licensees as may be necessary for the effective
administration of this article;

(3) Regulating the branding and labeling of packages,
bottles or other containers in which nonintoxicating beer
may be sold; and, in his discretion, requiring the collection
of all taxes provided for under section thirteen of this
article, by the use of tax paid crowns, lids and/or stamps;

(4) Prohibiting shipment into the state and sale within
the state of low grade or under-standard nonintoxicating
beer;

(5) Referring to licenses and the issuance and revocation
of the same;

(6) Establishing the suitability of businesses and
locations for licensure, and requiring licensees to keep their
places of business where nonintoxicating beer is sold at
retail, and the equipment used in connection therewith,
clean and in a sanitary condition;

(7) The establishment of advertising guidelines,
prohibitions, and prior permissions generally, including,
but not limited to (i) the use of posters, placards, mirrors,
windows, doors, or indoor and outdoor signs generally, and
print and electronic advertising of retail licensees
specifically, (ii) the sponsoring of athletic events or contests
by licensees and restrictions relating thereto, (iii) the use of
equipment, fixtures or supplies in advertising, (iv) false
advertising with respect to any product of or sold by any
licensee, including, but not limited to, draught beer and
coolers, and (v) the extent, if any, to which free goods and
other inducements may be utilized by any licensee;

(8) Wholesale prices or price changes, including, but not
limited to, the regulation and extent, if any, of any
temporary price markoff or markdown, temporary
wholesale price change downward or price discount,
sometimes referred to as "post downs" or as "posting
down" or any other price change, the express purpose of
which is to be into effect a temporary price reduction, as
well as the duration of time during which such temporary
price reduction is to remain in effect.
(9) Restrictions upon West Virginia distributors or
other licensees with respect to the purchase of any
nonintoxicating beer or malt coolers from manufacturers or
brewers whether within or without the state who have
failed to qualify for manufacture or shipment of any such
product in the state; and
(10) Regulating, restricting or prohibiting a distributor
from selling, offering for sale, distributing or delivering
nonintoxicating beer to any retailer whose principal place
of business, residence or licensed premises is located
without or beyond the assigned territory of such distributor
of such nonintoxicating beer.
(b) Any rule, regulation, or order heretofore adopted by
the commissioner and currently in effect upon the
convening of the regular session of the Legislature held in
the year one thousand nine hundred eighty-six shall remain
in effect until changed by the commissioner in the manner
prescribed by article three, chapter twenty-nine-a of this
code, irrespective of whether specific authority for such
currently effective rule or regulation existed prior to such
date.
§11-16-23. Revocation or suspension of license.
(a) The commissioner may revoke or suspend the license
of any licensee (i) for any of the reasons and upon any
grounds declared to be unlawful by section eighteen of this
article; or (ii) for any reason or ground upon which a license
might have been refused in the first instance had the facts at
the time of the issuance of renewal of such license been
known to the commissioner; or (iii) for the violation of any
rule, regulation or order promulgated by the commissioner
under authority of this article.
(b) In addition to the grounds for revocation or
suspension of a license above set forth, conviction of the
licensee of any offense constituting a violation of the laws of
this state or of the United States relating to non-
intoxicating beer or alcoholic liquor shall be mandatory
grounds for revocation or suspension of a license.
§11-16-24. Hearing on revocation or suspension of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee.

The commissioner shall not revoke nor suspend any license issued pursuant to this article or impose any civil penalties authorized thereby unless and until a hearing shall be held after twenty days notice to the licensee of the time and place of such hearing, which notice shall contain a statement or specification of the charges, grounds or reasons for such proposed contemplated action, and which shall be served upon the licensee as notices under the West Virginia rules of civil procedure or by certified mail, return receipt requested, to the address for which the license was issued; at which time and place, so designed in the notice, the licensee shall have the right to appear and produce evidence in his behalf, and to be represented by counsel.

The commissioner shall have authority to summon witnesses in the hearings before him, and fees of witnesses summoned on behalf of the state in proceedings to revoke or suspend licenses shall be treated as a part of the expenses of administration and enforcement. Such fees shall be the same as those in similar hearings in the circuit courts of this state.

If, at the request of the licensee or on his motion, the hearing shall be continued and shall not take place on the day fixed by the commissioner in the notice above provided for, then such licensee's license shall be suspended until the hearing and decision of the commissioner, and in the event of revocation or suspension of such license, upon hearing before the commissioner, the licensee shall not be permitted to sell beer pending an appeal as provided by this article. Any person continuing to sell beer after his license has been suspended or revoked, as hereinbefore provided, shall be guilty of a misdemeanor and shall be punished as provided in section nineteen of this article.

The action of the commissioner in revoking or suspending a license shall be subject to review by the circuit court of Kanawha County, West Virginia, in the manner provided in chapter twenty-nine-a of this code, when such licensee may be aggrieved by such revocation or suspension.
such review must be filed with said circuit court within a period of thirty days from and after the date of revocation or suspension by the commissioner; and any licensee obtaining an order for such review shall be required to pay the costs and fees incident to transcribing, certifying and transmitting the records pertaining to such matter to the circuit court. An application to the supreme court of appeals of West Virginia for a writ of error from any final order of the circuit court in any such matter shall be made within thirty days from and after the entry of such final order.

All such hearings, upon notice to show cause why license should be revoked or suspended, before the commissioner, shall be held in the offices of the commissioner in Charleston, Kanawha County, West Virginia, unless otherwise provided in such notice, or agreed upon between the licensee and the commissioner; and when such hearing is held elsewhere than in the commissioner's office, the licensee may be required to make deposits of the estimated costs of such hearing.

Whenever any licensee has been convicted of any offense constituting a violation of the laws of this state or of the United States relating to nonintoxicating beer, or alcoholic liquor, and such conviction has become final, the clerk of the court in which such licensee has been convicted shall forward to the commissioner a certified copy of the order or judgment of conviction if such clerk has knowledge that the person so convicted is a licensee, together with the certification of such clerk that the conviction is final.

In the case of a Class B licensee with multiple licensed locations, the commissioner may, in his or her discretion, revoke or suspend only the license for the location or locations involved in the unlawful conduct for which licensure is revoked as opposed to all separately licensed locations of such licensee.

§11-16-25. Reissuance of license after revocation.

No license shall be issued to any person who has formerly held a license, under the provisions of this article, which has been revoked by the commissioner, within a period of two years from the date of such revocation; nor shall any license be issued hereunder to any person who was an officer or
stockholder of a corporation whose license was revoked as aforesaid, nor to any person who was a member of a partnership or association whose license was revoked as aforesaid, within said period of two years from the date of revocation; nor shall any license be issued to any corporation having a stockholder or director who has had a license revoked as aforesaid, within said period of two years from the date of the revocation of such person's license:

Provided, That the commissioner may, in his or her discretion, reissue Class B licenses for any of such licensee's locations not involved in the unlawful conduct of which licensure was revoked notwithstanding such two year period.

§11-16-26. Municipal license tax.

(a) Any municipal corporation in this state shall have the authority to levy a license tax under the provisions of this article upon any retailer, distributor or brewer of nonintoxicating beer whose place of business is situated within such municipality, but the amount of the license tax levied by such municipal corporation shall in no event exceed the amount fixed herein to be levied by the state. Only one municipal tax is to be so imposed and that only by the municipality in which the place of business, or warehouse, is located. Cities and incorporated towns are hereby empowered to enact ordinances for the enforcement of this article in conformity with the provisions of the same:

Provided, That in no case shall the rate of such municipal license tax exceed the rate of such tax in effect on the first day of January, one thousand nine hundred eighty-six.

§11-16-27. Revenue collected and paid to state treasurer; expense of administration.

Taxes imposed and collected under the provisions of this article shall be paid to the state treasurer in the manner provided by law, and the taxes imposed by sections nine and thirteen of this article shall be credited to the state fund, general revenue. The expenses of administration and enforcement shall be paid out of the taxes collected under sections nine and thirteen of this article, but shall not exceed fifteen percent of the amount so collected.
§11-16-28. Expiration date of existing licenses; when provisions operable.

(a) A license now in effect authorizing the manufacture, distribution or sale of nonintoxicating beer shall remain in effect until June thirtieth, one thousand nine hundred eighty-six, unless sooner revoked in accordance with the provisions of this article.

(b) The provisions of this article enacted during the regular session of the Legislature held in the year one thousand nine hundred eighty-six shall become operable at 12:01 a.m. on the first day of July of said year: Provided, That the commissioner may issue licenses prior to such date and any licensee may do any act necessary in order to prepare for and be able to engage in the retail sale of any product regulated by this article on that date and at that time.

§11-16-29. Severability.

The provisions of subdivision (cc), section ten, article two, chapter two of this code, shall apply to the provisions of this article to the same extent as if the same were set forth in extenso herein and to the extent therein provided the provisions of this article are declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce A. Willems
Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1986.

Todd J. Miller
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Dan Tankersley
President of the Senate

Joseph P. Alley, Jr.
Speaker House of Delegates

The within ..................this the 25th
day of ....................., 1986.

Michael D. Steindl
Governor
PRESENTED TO THE
GOVERNOR
Date 3/21/86
Time 4:23 p.m.