

No. 536



WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986



ENROLLED

Committee Substitute for

SENATE BILL NO. 536

(By Senator *Tuckovich, Mr. President, et al.*)



PASSED *March 8,* 1986

In Effect..... *July 1, 1986*..... Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 536

(SENATORS TONKOVICH, MR. PRESIDENT (BY REQUEST) AND HARMAN,
original sponsors)

[Passed March 8, 1986; to take effect July 1, 1986.]

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.

1 It is hereby found by the Legislature and declared to be
2 the policy of this state that it is in the public interest to
3 regulate and control the manufacture, sale, distribution,
4 transportation, storage and consumption of the beverages
5 regulated by this article within this state and that,
6 therefore, the provisions of this article are a necessary,
7 proper and valid exercise of the police powers of this state

8 and are intended for the protection of the public safety,
9 welfare, health, peace and morals and are further intended
10 to eliminate, or to minimize to the extent practicable, the
11 evils attendant to the unregulated, unlicensed and unlawful
12 manufacture, sale, distribution, transportation, storage
13 and consumption of such beverages and are further
14 intended to promote temperance in the use and
15 consumption thereof. In order to further these ends, the
16 provisions of this article and of the rules and regulations
17 promulgated pursuant thereto, shall be construed so that
18 the accomplishment of these stated purposes may be
19 effectuated.

§11-16-3. Definitions.

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

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

9 (2) "Commissioner" shall mean the West Virginia
10 nonintoxicating beer commissioner.

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

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

28 (5) "Original container" shall mean the container used

29 by the brewer at the place of manufacturing, bottling or
30 otherwise producing nonintoxicating beer for sale at
31 wholesale.

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

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

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

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

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

23 (b) The commissioner, at the time of his or her
24 appointment and qualification, shall be a citizen of the
25 United States and a resident of the state of West Virginia
26 and shall have been a qualified voter in the state for a period
27 of at least one year next preceding his or her appointment

28 and shall be not less than thirty years of age. No
29 commissioner, during his or her period of service as such,
30 shall hold any other office under the laws of this state or of
31 the United States.

32 (c) The commissioner, with the consent of the governor,
33 shall appoint two deputy commissioners both of whom shall
34 have the same qualifications as are required of the
35 commissioner. One deputy commissioner shall be in charge
36 of administration and the other deputy commissioner shall
37 be in charge of law enforcement. The deputy commissioner
38 of administration, in the absence of the commissioner, shall
39 exercise all the powers of the commissioner and generally
40 shall exercise such powers as are delegated to him or her by
41 the commissioner. The deputy commissioner of law
42 enforcement shall be, in the absence of the commissioner,
43 responsible for and exercise all the powers of the
44 commissioner in respect to law enforcement and regulation
45 and shall generally exercise such powers as are delegated to
46 him or her by the commissioner.

47 (d) Before entering upon the duties of their respective
48 offices, the commissioner and the deputy commissioner
49 shall execute and file with the state treasurer a penal bond
50 in such sum as shall be fixed by the governor, but the
51 amount of such bond shall not be less than five thousand
52 dollars. Penal bonds in such penal sums as shall be fixed by
53 the governor likewise shall be executed and filed with the
54 state treasurer by such employees of the commissioner as
55 the commissioner, with the consent of the governor, shall
56 prescribe. No such bond of any employee handling moneys
57 collected by the commissioner under the provisions of this
58 article shall be less than five thousand dollars. All such
59 bonds shall be payable to the state of West Virginia and
60 shall be conditioned for the faithful performance of the
61 duties imposed by law or lawful authority upon the
62 commissioner, deputy commissioners or employees, and
63 further conditioned that the person bonded will not
64 knowingly violate the provisions of any act, rule or
65 regulation relating to the manufacture, sale, distribution or
66 transportation of alcohol, alcoholic liquors or intoxicating
67 beer. All bonds required to be given under this section,
68 before being accepted by the state treasurer, shall be
69 approved by the attorney general and all such bonds shall

70 be given with surety approved by the attorney general. The
71 cost of such bond shall be borne by the commissioner as part
72 of his operating expense.

73 (e) In addition to the service of the deputy
74 commissioners hereinabove provided for, the commissioner
75 shall appoint an adequate number of competent persons to
76 serve as agents of the commissioner for the purpose of
77 keeping all necessary accounts and records required under
78 the provisions of this article; investigating the books,
79 accounts, records and other papers of retailers, distributors
80 and brewers; investigating applicants for license and the
81 places of business of retailers, distributors and brewers;
82 procuring evidence with respect to violations of the
83 provisions of this article, and particularly for use at
84 hearings held by the commissioner and on proceedings
85 instituted in court for the purpose of revoking or
86 suspending licenses hereunder; and such agents shall
87 perform such other duties as the commissioner may direct.
88 Such agents shall have the right to enter any licensed
89 premises in the state in the performance of their duties at
90 any hour of the day or night when beer is being sold or
91 consumed on such licensed premises. Refusal by any
92 licensee or by any employee of a licensee to permit such
93 agents to enter the licensed premises shall be an additional
94 cause for revocation or suspension of the license of such
95 licensee by the commissioner. The compensation of such
96 deputy commissioners, employees and agents shall be fixed
97 by the commissioner.

98 (f) Services rendered the state by clerks, sheriffs,
99 commissioners in chancery and special commissioners,
100 designated by the court, and court reporters and
101 stenographers performing services for said commissioner
102 and fees of witnesses summoned on behalf of the state in
103 proceedings to revoke or suspend retailer's licenses, shall be
104 treated as part of the expenses of administration and
105 enforcement, and such officers and said other persons shall
106 be paid the same fees and charges as would be chargeable
107 for like services performed for an individual; and the
108 compensation of such clerks, sheriffs and other persons
109 shall be paid out of the amount allocated for the expense of
110 administration enforcement, after the amount of such fees
111 and other charges shall be certified by the court to the
112 auditor.

§11-16-5. State license required; alcoholic content of beer manufactured for sale without state.

1 No person shall manufacture, sell, possess for sale,
2 transport or distribute nonintoxicating beer except in
3 accordance with the provisions of this article, and after first
4 obtaining a state license therefor, as provided in this article.
5 Nothing contained in this article shall prohibit any brewer
6 located within the state from manufacturing or
7 transporting for sale without the state beer of an alcoholic
8 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.

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

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

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

1 No license issued under the provisions of this article shall

2 be transferred to another person, nor shall the location of
3 the premises to which the license relates be changed
4 without the written consent of the commissioner, which
5 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.

1 (a) 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 under
4 oath:

5 (1) The name and residence of the applicant, the
6 duration of such residency, that the applicant has been a
7 resident of the state for a period of two years next preceding
8 the date of the application and that the applicant is twenty-
9 one years of age. If the applicant is a firm, association,
10 partnership, limited partnership or corporation, the
11 application shall include the residence of the members or
12 officers for a period of two years next preceding the date of
13 such application: *Provided*, That if any person, firm,
14 partnership, limited partnership, association or
15 corporation applies for a license as a distributor, such
16 person, or in the case of a firm, partnership, limited
17 partnership or association, the members or officers thereof
18 shall state under oath that each has been a bona fide
19 resident of the state for four years preceding the date of
20 such application;

21 (2) The place of birth of applicant, that he or she is a
22 citizen of the United States and of good moral character
23 and, if a naturalized citizen, when and where naturalized;
24 and, if a corporation organized or authorized to do business
25 under the laws of the state, when and where incorporated,
26 with the name and address of each officer; that each officer
27 is a citizen of the United States and a person of good moral
28 character; and if a firm, association, partnership or limited
29 partnership, the place of birth of each member of the firm,
30 association, partnership or limited partnership, and that
31 each member is a citizen of the United States and if a
32 naturalized citizen, when and where naturalized, each of
33 whom must qualify and sign the application: *Provided*,
34 That the requirements as to residence shall not apply to the
35 officers of a corporation which shall apply for a retailer's

36 license, but the officers, agent or employee who shall
37 manage and be in charge of the licensed premises shall
38 possess all of the qualifications required of an individual
39 applicant for a retailer's license, including the requirement
40 as to residence;

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

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

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

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

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

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

73 (b) The provisions and requirements of subsection
74 (a) of this section are mandatory prerequisites for the
75 issuance, and in the event any applicant fails to qualify
76 under the same, license shall be refused. In addition to the
77 information furnished in any application, the commissioner

78 may make such addition and independent investigation of
79 each applicant, and of the place to be occupied, as deemed
80 necessary or advisable; and for this reason each and all
81 applications, with license fee and bond, must be filed thirty
82 days prior to the beginning of any fiscal year, and if
83 application is for an unexpired portion of any fiscal year,
84 issuance of license may be withheld for such reasonable
85 time as necessary for investigation.

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

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

91 (2) That the place to be occupied by the applicant is not
92 a suitable place; or is within three hundred feet of any
93 school or church, measured from front door to front door
94 along the street or streets: *Provided*, That this requirement
95 shall not apply to Class B licensee, or to any place now
96 occupied by a beer licensee, so long as it is continuously so
97 occupied: *Provided, however*, That the prohibition against
98 locating any such place to be occupied by an applicant
99 within three hundred feet of any school shall not apply to
100 any college or university that has notified the
101 commissioner, in writing, that it has no objection to the
102 location of any such place within three hundred feet of such
103 college or university; or

104 (3) That the license should not be issued for reason of
105 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.**

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

8 (1) Retail dealers shall be divided into two classes, Class
9 A and Class B. In the case of a Class A retail dealer the
10 license fee shall be one hundred fifty dollars for each place

11 of business; the license fee for social, fraternal or private
12 clubs not operating for profit, and having been in
13 continuous operation for two years or more immediately
14 preceding the date of application, shall be one hundred fifty
15 dollars: *Provided*, That railroads operating in this state
16 may dispense nonintoxicating beer upon payment of an
17 annual license tax of ten dollars for each dining, club or
18 buffet car in which the same is dispensed.

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

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

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

49 (3) In the case of a brewer with its principal place of
50 business located in this state, the license fee shall be one
51 thousand five hundred dollars for each place of
52 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.

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

10 (1) The name of the corporation and the state under the
11 laws of which it is incorporated;

12 (2) The date of incorporation;

13 (3) The address of the principal office of the
14 corporation;

15 (4) The names and respective addresses of the directors
16 and officers of the corporation;

17 (5) The date that such foreign corporation qualified to
18 transact business in this state; and

19 (6) Such other information as the commissioner, by rule
20 or regulation, may require.

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

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

37 (d) All sales representatives for any brewer or

38 manufacturer of nonintoxicating beer shall be issued a
39 permit by the commissioner. The permit fee for each sales
40 representative of or employed by a licensed brewer or
41 manufacturer shall be fifty dollars.

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

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

54 (g) Notwithstanding any other provision of this article
55 to the contrary, any corporation issued a brewer's license
56 under the provisions of this article shall not engage in the
57 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.**

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

15 A license issued under the provisions of this section and
16 the licensee holding such license shall be subject to all other
17 provisions of this article and the rules, regulations and
18 orders of the commissioner relating to such special license:

19 *Provided*, That the commissioner may, by rule, regulation
20 or order, provide for certain waivers or exceptions with
21 respect to such provisions, rules, regulations or order, as the
22 circumstances of each such festival or fair may require,
23 including, without limitation, the right to revoke or
24 suspend any license issued pursuant to this section prior to
25 any notice or hearing, notwithstanding the provisions of
26 section twenty-four of this article: *Provided, however*, That
27 under no circumstances shall the provisions of subdivisions
28 (1), (2) or (3), subsection (a), section eighteen of this article,
29 be waived nor shall any exception be granted with respect
30 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.**

1 (a) In addition to furnishing the information required
2 by this article, each brewer or distributor applying for a
3 license under this article shall furnish, as prerequisite to a
4 license, a bond with some solvent surety company as surety,
5 to be approved by the commissioner, payable to the state of
6 West Virginia, conditioned for the payment of any and all
7 additional taxes accruing during the period of such license,
8 and conditioned further for the faithful observance of the
9 provisions of this article, the rules, regulations and orders
10 promulgated pursuant thereto and of any other laws of the
11 state of West Virginia generally relating to the sale,
12 transportation, storage and distribution of nonintoxicating
13 beer, which said bonds shall be forfeited to the state upon
14 the revocation of the license of any such brewer or
15 distributor. The amount of such bond, in the case of a
16 resident brewer, shall be not less than five thousand dollars,
17 nor more than ten thousand dollars, and in the case of a
18 distributor, not less than two thousand dollars, nor more
19 than five thousand dollars for each place of business
20 licensed and conducted within the state, the amount of such
21 bond, between the minimum and maximum amounts, to be
22 determined in the discretion of the commissioner. In the
23 case of brewers shipping nonintoxicating beer into the
24 state, any brewer must also furnish a bond in a penalty of
25 not less than five thousand dollars nor more than twenty-

26 five thousand dollars conditioned as hereinabove in this
27 subsection provided and any bond furnished pursuant
28 hereto shall be forfeited to the state in the full amount of
29 said bond upon revocation of license of any such brewer or
30 distributor. Such money received by the state shall be
31 credited to the state fund, general revenue.

32 (b) Each Class A retail dealer, in addition to furnishing
33 the information required by this article, shall furnish as
34 prerequisite to obtaining a license, a bond with some
35 solvent surety company as surety, to be approved by the
36 commissioner, payable to the state of West Virginia, in the
37 amount not less than five hundred dollars, nor more than
38 one thousand dollars, within the discretion of the
39 commissioner. All such bonds shall be conditioned for the
40 faithful observance of the provisions of this article, the
41 rules, regulations and orders promulgated pursuant thereto
42 and of any other laws of the state of West Virginia generally
43 relating to the distribution, sale and dispensing of
44 nonintoxicating beer, and shall be forfeited to the state in
45 the full amount of said bond upon the revocation of the
46 license of any such retail dealer. Such money received by
47 the state shall be credited to the state fund, general revenue.

48 (c) Upon the revocation of the license of any Class A
49 retail dealer by the commissioner or by any court of
50 competent jurisdiction, the commissioner or the clerk of
51 said court shall notify the prosecuting attorney of the
52 county wherein such retail dealer's place of business is
53 located, or the prosecuting attorney of the county wherein
54 the licensee resides, of such revocation, and, upon receipt of
55 said notice, it shall be the duty of such prosecuting attorney
56 forthwith to institute appropriate proceedings for the
57 collection of the full amount of said bond. Upon request of
58 such prosecuting attorney, the commissioner shall deliver
59 the bond to him. Willful refusal without just cause therefor
60 by the prosecuting attorney to perform said duty hereby
61 imposed shall subject him to removal from office by the
62 circuit court of the county for which said prosecuting
63 attorney was elected upon proper proceedings and proof in
64 the manner provided by law.

§11-16-13. Barrel tax on nonintoxicating beer.

1 (a) There is hereby levied and imposed, in addition to

2 the license taxes provided for in this article, a tax of five
3 dollars and fifty cents on each barrel of thirty-one gallons
4 and in like ratio on each part barrel of nonintoxicating beer
5 manufactured in this state for sale within this state,
6 whether contained or sold in barrels, bottles or other
7 containers, and a like tax is hereby levied and imposed upon
8 all nonintoxicating beer manufactured outside of this state
9 and brought into this state for sale within this state; but no
10 nonintoxicating beer manufactured, sold or distributed in
11 this state is subject to more than one barrel tax. The brewer
12 manufacturing or producing nonintoxicating beer within
13 this state for sale within this state shall pay the barrel tax on
14 such nonintoxicating beer, and, except as provided
15 otherwise, the distributor who is the original consignee of
16 nonintoxicating beer manufactured or produced outside of
17 this state, or who brings such nonintoxicating beer into this
18 state, shall pay the barrel tax on such nonintoxicating beer
19 manufactured or produced outside of this state.

20 (b) On or before the tenth day of each month during the
21 license period, every brewer who manufactures or produces
22 nonintoxicating beer within this state shall file a report in
23 writing, under oath, to the commissioner, in the form
24 prescribed by the commissioner, stating its total estimated
25 sales of nonintoxicating beer to distributors within this
26 state during that month, and at the same time shall pay the
27 tax levied by this article on such estimated monthly sales.
28 On or before the tenth day of each month during the license
29 period, every distributor who is the original consignee of
30 nonintoxicating beer manufactured or produced outside
31 this state or who brings such beer into this state for sale
32 shall file a report in writing, under oath, to the
33 commissioner, in the form prescribed by the commissioner,
34 stating its total estimated purchases of such
35 nonintoxicating beer during that month, and at the same
36 time shall pay the tax thereon levied by this article for such
37 estimated monthly purchase: *Provided*, That the
38 commissioner may allow, or require, a brewer who
39 manufactures or produces nonintoxicating beer outside
40 this state to file the required report and pay the required tax
41 on behalf of its distributor or distributors. Any brewer or
42 distributor who files a report under this subsection may
43 adjust its monthly estimated sales or purchases report or

44 reports by filing amended reports by the twenty-fifth day of
45 the reporting month.

46 (c) Every brewer or distributor who files a report under
47 subsection (b) of this section shall file a final monthly report
48 of said sales or purchases, in a form and at a time prescribed
49 by the commissioner, stating actual nonintoxicating beer
50 sales and purchases and other information which
51 commissioner may require, and shall include a remittance
52 for any barrel tax owed for actual sales or purchases made
53 in excess of the amount estimated for that month.

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

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

§11-16-14. Collection of unpaid license tax.

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

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

1 Every brewer, manufacturer or distributor shall

2 maintain, keep and preserve for a period of three years such
3 record or records of nonintoxicating beer manufactured,
4 sold or distributed in this state, including, but not limited
5 to, coolers, together with such invoices, records, receipts,
6 bills of lading and other pertinent papers as may be
7 required by the commissioner, and the commissioner shall
8 have authority to inspect, by himself or through his duly
9 designated agent, the books, accounts, records and
10 memoranda of any person licensed under the provisions of
11 this article, and to examine, under oath, any officer, agent
12 or employee of any brewer, manufacturer or distributor.
13 The commissioner may require the production, within this
14 state at such time and place as he may designate, of any
15 books, accounts, papers or records kept within or without
16 the state, or verified copies in lieu thereof, in order that an
17 examination thereof may be made by the commissioner or
18 his duly designated agents. If, as the result of such
19 examination, it shall be found that any nonintoxicating
20 beer, subject to the payment of a tax, has been
21 manufactured, brewed, sold or distributed by any person,
22 upon which the tax has not been paid, the commissioner
23 shall make an assessment of the amount of tax so found to
24 be due, and, in addition thereto and as a part thereof, shall
25 assess a penalty of fifty percent of the amount of such tax
26 and shall notify such person of the total amount due. If the
27 same remains unpaid for a period of thirty days, the
28 commissioner shall have the authority to revoke any license
29 held at the time by the licensee and, in addition thereon, to
30 collect the amount found to be due by an appropriate legal
31 proceeding in any of the circuit courts in which an action for
32 the collection of unpaid taxes may be maintained under
33 section fourteen of this article, unless an appeal is taken
34 from the action of the commissioner as hereinafter
35 provided.

36 Within ten days after receipt of notice of any additional
37 amount claimed to be due from any person as shown by an
38 examination by the commissioner, such person, if he or she
39 deems themselves aggrieved thereby, shall so notify the
40 commissioner and shall request a hearing thereon and the
41 commissioner shall set a hearing into the matters raised by
42 such notice, which hearing shall be held as a contested case
43 pursuant to article five, chapter twenty-nine-a of this code,

44 except that the licensee shall have the right of appeal from
45 the commissioner's findings only to the circuit court of
46 Kanawha County, West Virginia. Whether the finding of the
47 commissioner is affirmed or reversed, such circuit court
48 shall enter an order accordingly and either party shall then
49 have the right of appeal to the supreme court of appeals of
50 the state.

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

1 No brewer or manufacturer whose chief place of business
2 is outside the state of West Virginia shall offer for sale or sell
3 nonintoxicating beer, in the state of West Virginia, or offer
4 any of the same for shipment into this state, except to a
5 distributor who is duly licensed under this article, and no
6 such brewer or manufacturer shall consign, ship or deliver
7 any of the same to any person within the state of West
8 Virginia, or sell and deliver the same outside the state of
9 West Virginia to be transported into the state of West
10 Virginia, except to a duly licensed distributor for delivery at
11 the place of business of such distributor as set forth in such
12 brewer's or manufacturer's license. No such brewer or
13 manufacturer shall have any interest in the business of any
14 distributor or retailer, nor be connected directly or
15 indirectly with any distributor or retailer. Every such
16 brewer or manufacturer shall mail to the commissioner on
17 or before the tenth day of each calendar month, a sworn
18 statement showing all such sales and shipments of
19 nonintoxicating beer made by such brewer or manufacturer
20 during the preceding calendar month. If any such brewer or
21 manufacturer shall violate any of the provisions of this
22 article or shall violate any of the rules, regulations or order
23 of the commissioner, such brewer or manufacturer shall be
24 punished in like manner as provided for any nonresident
25 brewer who shall violate any provisions of this section. If
26 any such brewer shall violate any of the provisions of this
27 article, he shall not be permitted to sell, ship or deliver any
28 nonintoxicating beer to any distributor or to otherwise
29 engage in any business authorized by this article for a
30 period of not to exceed one year from the date the notice
31 shall be mailed to such brewer or manufacturer by the
32 commissioner of the fact that such brewer or manufacturer

33 has violated the provisions of this article or such rules,
34 regulations or orders of the commissioner. During such
35 period of one year, it shall be unlawful for any distributor or
36 manufacturer or for any other person within the
37 jurisdiction of the state of West Virginia, to buy or receive
38 from such brewer or manufacturer any nonintoxicating
39 beer or have any dealings with such brewer or
40 manufacturer with respect thereto. A distributor who has
41 not qualified with residence requirements of this article or
42 whose chief place of business is outside the state of West
43 Virginia, shall not sell, ship, transport, convey or deliver or
44 cause to be sold, shipped, transported, conveyed or
45 delivered, directly or indirectly, any nonintoxicating beer
46 to any distributor within the state of West Virginia. If any
47 such distributor shall violate any of the provisions of this
48 article, he shall be punished in like manner as provided for
49 any nonresident brewer or manufacturer who shall violate
50 any provisions of this section.

§11-16-17. Container labeling.

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

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

1 (a) It shall be unlawful:
2 (1) For any licensee, his, her, its or their servants, agents
3 or employees to sell, give or dispense, or any individual to
4 drink or consume, in or on any licensed premises or in any
5 rooms directly connected therewith, nonintoxicating beer
6 or cooler on weekdays between the hours of two o'clock a.m.
7 and seven o'clock a.m., or between the hours of two o'clock
8 a.m. and one o'clock p.m., on any Sunday, except in private
9 clubs licensed under the provisions of article seven, chapter
10 sixty of this code, where the hours shall conform with the
11 hours of sale of alcoholic liquors;
12 (2) For any licensee, his, her, its or their servants, agents

13 or employees, to sell, furnish or give any nonintoxicating
14 beer as defined in this article to any person visibly or
15 noticeably intoxicated, or to any person known to be insane
16 or known to be a habitual drunkard;

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

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

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

35 (6) For any brewer or distributor to give, furnish, rent or
36 sell any equipment, fixtures, signs or supplies directly or
37 indirectly or through a subsidiary or affiliate to any licensee
38 engaged in selling products of the brewing industry at
39 retail, or to offer any prize, premium, gift or other similar
40 inducement, except advertising matter of nominal value, to
41 either trade or consumer buyers: *Provided*, That a
42 distributor may offer, for sale or rent, tanks of carbonic gas.
43 Nothing herein contained shall prohibit a brewer from
44 sponsoring any professional or amateur athletic event or
45 from providing prizes or awards for participants and
46 winners in any such events: *Provided, however*, That no
47 such event shall be sponsored which permits actual
48 participation by athletes or other persons who are minors,
49 unless specifically authorized by the commissioner;

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

52 (8) For any licensee except the holder of a license to
53 operate a private club issued under the provisions of article
54 seven, chapter sixty of this code, or a holder of a license for a

55 private wine restaurant issued under the provisions of
56 article eight of said chapter sixty, to possess a federal
57 license, tax receipt or other permit entitling, authorizing or
58 allowing such licensee to sell liquor or alcoholic drinks
59 other than nonintoxicating beer;

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

70 (10) For any licensee to manufacture, import, sell, trade,
71 barter, possess or acquiesce in the sale, possession or
72 consumption of any alcoholic liquors on the premises
73 covered by such license or on premises directly or indirectly
74 used in connection therewith: *Provided*, That the
75 prohibition contained in this subdivision with respect to the
76 selling or possessing or to the acquiescence in the sale,
77 possession or consumption of alcoholic liquors shall not be
78 applicable with respect to the holder of a license to operate
79 a private club issued under the provisions of article seven,
80 chapter sixty of this code, nor shall the prohibition be
81 applicable to a private wine restaurant licensed under the
82 provisions of article eight of said chapter insofar as such
83 private wine restaurant is authorized to serve wine;

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

89 (12) For any licensee to permit loud, boisterous or
90 disorderly conduct of any kind upon his or her premises or
91 to permit the use of loud musical instruments if either or
92 any of the same may disturb the peace and quietude of the
93 community wherein such business is located: *Provided*,
94 That no licensee shall have in connection with his or her
95 place of business any loudspeaker located on the outside of
96 the licensed premises that broadcasts or carries music of
97 any kind;

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

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

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

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

111 (17) For any Class A licensee, his, her, its or their
112 servants, agents or employees, or for any licensee by or
113 through such servants, agents or employees, to allow, suffer
114 or permit any person less than eighteen years of age to loiter
115 in or upon any licensed premises; except, however, that the
116 provisions of this subdivision shall not apply where such
117 person under the age of eighteen years is in or upon such
118 premises in the immediate company of his or her parent or
119 parents, or where and while such person under the age of
120 eighteen years is in or upon such premises for the purpose of
121 and actually making a lawful purchase of any items or
122 commodities therein sold, or for the purchase of and
123 actually receiving any lawful service therein rendered,
124 including the consumption of any item of food, drink or soft
125 drink therein lawfully prepared and served or sold for
126 consumption on such premises;

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

140 (19) For any licensee or any agent, servant or employee
141 of any such licensee to knowingly violate any rule or

142 regulation lawfully promulgated by the commissioner in
143 accordance with the provisions of chapter twenty-nine-a of
144 this code.

145 (b) Any person who violates any provision of this article
146 including, but not limited to, any provision of this section,
147 or any rule, regulation, or order lawfully promulgated by
148 the commissioner, or who makes any false statement
149 concerning any material fact in submitting application for
150 license or for a renewal of a license or in any hearing
151 concerning the revocation thereof, or who commits any of
152 the acts herein declared to be unlawful, shall be guilty of a
153 misdemeanor, and shall be punished for each offense by a
154 fine of not less than twenty-five nor more than five hundred
155 dollars, or imprisoned in the county jail for not less than
156 thirty days or more than six months, or by both fine and
157 imprisonment in the discretion of the court. Magistrates
158 shall have concurrent jurisdiction with the circuit court,
159 and any other courts having criminal jurisdiction in their
160 county, for the trial of all misdemeanors arising under this
161 article.

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

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

1 (a) Any person under the age of twenty-one years who,
2 for the purpose of purchasing nonintoxicating beer,

3 misrepresents his or her age, or who for such purpose
4 presents or offers any written evidence of age which is false,
5 fraudulent or not actually his or her own, or who illegally
6 attempts to purchase nonintoxicating beer, is guilty of a
7 misdemeanor, and, upon conviction thereof, shall be fined
8 in an amount not to exceed fifty dollars or shall be
9 imprisoned in the county jail for a period not to exceed
10 seventy-two hours, or both such fine and imprisonment, or,
11 in lieu of such fine and imprisonment, may, for the first
12 offense, be placed on probation for a period not exceeding
13 one year.

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

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

32 If the Congress of the United States repeals the mandate
33 established by the Surface Transportation Assistance Act of
34 1982 relating to National Uniform Drinking Age of twenty-
35 one as found in section six of Public Law 98-363, or a court
36 of competent jurisdiction declares the provision to be
37 unconstitutional or otherwise invalid, it is the intent of the
38 Legislature that the provisions contained in this section and
39 section eighteen of this article which prohibit the sale,
40 furnishing, giving, purchase or ownership of
41 nonintoxicating beer to or by a person who is less than
42 twenty-one years of age shall be null and void and the
43 provisions therein shall thereafter remain in effect and
44 apply to the sale, furnishing, giving, purchase or ownership
45 of nonintoxicating beer to or by a person who is less than
46 nineteen years of age.

§11-16-20. Unlawful acts of brewers or manufacturers; criminal penalties.

1 (a) It shall be unlawful:

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

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

29 (b) The violation of any provision of this section by any
30 brewer or manufacturer shall constitute grounds for the
31 forfeiture of the bond furnished by such brewer or
32 manufacturer in accordance with the provisions of section
33 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.

1 (a) On and after July one, one thousand nine hundred

2 seventy-one, it shall be unlawful for any brewer to transfer
3 or deliver to a distributor any nonintoxicating beer, ale or
4 other malt beverage or malt cooler without first having
5 entered into an equitable franchise agreement with such
6 distributor, which franchise agreement shall be in writing,
7 shall be identical as to terms and conditions with all other
8 franchise agreements between such brewer and its other
9 distributors in this state, and which shall contain a
10 provision in substance or effect as follows:

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

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

43 (b) It shall also be unlawful:

44 (1) For any brewer or distributor, or any officer, agent
45 or representative of any brewer or distributor, to coerce or
46 persuade or attempt to coerce or persuade any person
47 licensed to sell, distribute or job nonintoxicating beer, ale
48 or other malt beverage or malt cooler at wholesale or retail,
49 to enter into any contracts or agreements, whether written
50 or oral, or to take any other action, which will violate or
51 tend to violate any provision of this article or any of the
52 rules, regulations, standards, requirements or orders of the
53 commissioner promulgated as provided in section twenty-
54 one of this article; or

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

75 (c) In the event a distributor desires to sell or transfer
76 his or her franchise, such distributor shall give to the
77 brewer at least sixty days notice in writing of such
78 impending sale or transfer and the identity of the person,
79 firm or corporation to whom such sale or transfer is to be
80 made and such other information as the brewer may
81 reasonably request. Such notice shall be made upon forms
82 and contain such additional information as the
83 commissioner by rule or regulation shall prescribe. A copy
84 of such notice shall be forwarded to the commissioner. The
85 brewer shall be given sixty days to approve or disapprove of
86 such sale or transfer. If the brewer neither approves nor

87 disapproves thereof within sixty days of the date of receipt
88 of such notice, the sale or transfer of such franchise shall be
89 deemed to be approved by such brewer. In the event the
90 brewer shall disapprove of the sale or transfer to the
91 prospective franchisee, transferee or purchaser, such
92 brewer shall give notice to the distributor of that fact in
93 writing, setting forth the reason or reasons for such
94 disapproval. The approval shall not be unreasonably
95 withheld by the brewer. The fact that the prospective
96 franchisee, transferee or purchaser has not had prior
97 experience in the nonintoxicating beer business or beer
98 business shall not be deemed sufficient reason in and of
99 itself for a valid disapproval of the proposed sale or
100 transfer, but may be considered in conjunction with other
101 adverse factors in supporting the position of the brewer.
102 Nor may the brewer impose requirements upon the
103 prospective franchisee, transferee or purchaser which are
104 more stringent or restrictive than those currently
105 demanded of or imposed upon the brewer's other
106 distributors in the state of West Virginia. A copy of such
107 notice of disapproval shall likewise be forwarded to the
108 commissioner and to the prospective franchisee, transferee
109 or purchaser. In the event the issue be not resolved within
110 twenty days from the date of such disapproval, either the
111 brewer, distributor or prospective franchisee, transferee or
112 purchaser shall notify the other parties of his or her demand
113 for arbitration and shall likewise notify the commissioner
114 thereof. A dispute or disagreement shall thereupon be
115 submitted to arbitration in the county in which the
116 distributor's principal place of business is located by a
117 board of three arbitrators, which request for arbitration
118 shall name one arbitrator. The party receiving such notice
119 shall within ten days thereafter by notice to the party
120 demanding arbitration name the second arbitrator, or
121 failing to do so, the second arbitrator shall be appointed by
122 the chief judge of the circuit court of the county in which the
123 distributor's principal place of business is located on
124 request of the party requesting arbitration in the first
125 instance. The two arbitrators so appointed shall name the
126 third, or failing to do so within ten days after appointment
127 of the second arbitrator, the third arbitrator may be
128 appointed by said chief judge upon request of either party.

129 The arbitrators so appointed shall promptly hear and
130 determine the questions submitted pursuant to the
131 procedures established by the American Arbitration
132 Association and shall render their decision with all
133 reasonable speed and dispatch but in no event later than
134 twenty days after the conclusion of evidence. Said decision
135 shall include findings of fact and conclusions of law and
136 shall be based upon the justice and equity of the matter.
137 Each party shall be given notice of such decision. If the
138 decision of the arbitrators be in favor of or in approval of
139 the proposed sale or transfer, the brewer shall forthwith
140 agree to the same and shall immediately transfer the
141 franchise to the proposed franchisee, transferee or
142 purchaser, unless notice of intent to appeal such decision is
143 given the arbitrators and all other parties within ten days of
144 notification of such decision. If any such party deems
145 himself aggrieved thereby, such party shall have a right to
146 bring an appropriate action in circuit court. Any and all
147 notices given pursuant to this subsection shall be given to
148 all parties by certified or registered mail, return receipt
149 requested.

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

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

1 (a) In addition to all other powers conferred upon the
2 commissioner and in order to effectively carry out the
3 provisions, intent and purposes of this article, the
4 commissioner shall have the power and authority to adopt,
5 promulgate, repeal, rescind and amend, in accordance with
6 the provisions of chapter twenty-nine-a of this code, rules,

7 regulations, standards, requirements and orders, including,
8 but not limited to, the following:

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

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

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

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

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

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

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

42 (8) Wholesale prices or price changes, including, but not
43 limited to, the regulation and extent, if any, of any
44 temporary price markoff or markdown, temporary
45 wholesale price change downward or price discount,
46 sometimes referred to as "post downs" or as "posting
47 down" or any other price change, the express purpose of

48 which is to be into effect a temporary price reduction, as
49 well as the duration of time during which such temporary
50 price reduction is to remain in effect.

51 (9) Restrictions upon West Virginia distributors or
52 other licensees with respect to the purchase of any
53 nonintoxicating beer or malt coolers from manufacturers or
54 brewers whether within or without the state who have
55 failed to qualify for manufacture or shipment of any such
56 product in the state; and

57 (10) Regulating, restricting or prohibiting a distributor
58 from selling, offering for sale, distributing or delivering
59 nonintoxicating beer to any retailer whose principal place
60 of business, residence or licensed premises is located
61 without or beyond the assigned territory of such distributor
62 of such nonintoxicating beer.

63 (b) Any rule, regulation, or order heretofore adopted by
64 the commissioner and currently in effect upon the
65 convening of the regular session of the Legislature held in
66 the year one thousand nine hundred eighty-six shall remain
67 in effect until changed by the commissioner in the manner
68 prescribed by article three, chapter twenty-nine-a of this
69 code, irrespective of whether specific authority for such
70 currently effective rule or regulation existed prior to such
71 date.

§11-16-23. Revocation or suspension of license.

1 (a) The commissioner may revoke or suspend the license
2 of any licensee (i) for any of the reasons and upon any
3 grounds declared to be unlawful by section eighteen of this
4 article; or (ii) for any reason or ground upon which a license
5 might have been refused in the first instance had the facts at
6 the time of the issuance of renewal of such license been
7 known to the commissioner; or (iii) for the violation of any
8 rule, regulation or order promulgated by the commissioner
9 under authority of this article.

10 (b) In addition to the grounds for revocation or
11 suspension of a license above set forth, conviction of the
12 licensee of any offense constituting a violation of the laws of
13 this state or of the United States relating to non-
14 intoxicating beer or alcoholic liquor shall be mandatory
15 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.

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

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

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

33 The action of the commissioner in revoking or suspending
34 a license shall be subject to review by the circuit court of
35 Kanawha County, West Virginia, in the manner provided in
36 chapter twenty-nine-a of this code, when such licensee may
37 be aggrieved by such revocation or suspension. Petition for

38 such review must be filed with said circuit court within a
39 period of thirty days from and after the date of revocation or
40 suspension by the commissioner; and any licensee
41 obtaining an order for such review shall be required to pay
42 the costs and fees incident to transcribing, certifying and
43 transmitting the records pertaining to such matter to the
44 circuit court. An application to the supreme court of
45 appeals of West Virginia for a writ of error from any final
46 order of the circuit court in any such matter shall be made
47 within thirty days from and after the entry of such final
48 order.

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

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

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

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

1 No license shall be issued to any person who has formerly
2 held a license, under the provisions of this article, which has
3 been revoked by the commissioner, within a period of two
4 years from the date of such revocation; nor shall any license
5 be issued hereunder to any person who was an officer or

6 stockholder of a corporation whose license was revoked as
7 aforesaid, nor to any person who was a member of a
8 partnership or association whose license was revoked as
9 aforesaid, within said period of two years from the date of
10 revocation; nor shall any license be issued to any
11 corporation having a stockholder or director who has had a
12 license revoked as aforesaid, within said period of two years
13 from the date of the revocation of such person's license:
14 *Provided*, That the commissioner may, in his or her
15 discretion, reissue Class B licenses for any of such licensee's
16 locations not involved in the unlawful conduct of which
17 licensure was revoked notwithstanding such two year
18 period.

§11-16-26. Municipal license tax.

1 (a) Any municipal corporation in this state shall have
2 the authority to levy a license tax under the provisions of
3 this article upon any retailer, distributor or brewer of
4 nonintoxicating beer whose place of business is situated
5 within such municipality, but the amount of the license tax
6 levied by such municipal corporation shall in no event
7 exceed the amount fixed herein to be levied by the state.
8 Only one municipal tax is to be so imposed and that only by
9 the municipality in which the place of business, or
10 warehouse, is located. Cities and incorporated towns are
11 hereby empowered to enact ordinances for the enforcement
12 of this article in conformity with the provisions of the same:
13 *Provided*, That in no case shall the rate of such municipal
14 license tax exceed the rate of such tax in effect on the first
15 day of January, one thousand nine hundred eighty-six.

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

1 Taxes imposed and collected under the provisions of this
2 article shall be paid to the state treasurer in the manner
3 provided by law, and the taxes imposed by sections nine and
4 thirteen of this article shall be credited to the state fund,
5 general revenue. The expenses of administration and
6 enforcement shall be paid out of the taxes collected under
7 sections nine and thirteen of this article, but shall not
8 exceed fifteen percent of the amount so collected.

§11-16-28. Expiration date of existing licenses; when provisions operable.

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

6 (b) The provisions of this article enacted during the
7 regular session of the Legislature held in the year one
8 thousand nine hundred eighty-six shall become operable at
9 12:01 a.m. on the first day of July of said year: *Provided*,
10 That the commissioner may issue licenses prior to such date
11 and any licensee may do any act necessary in order to
12 prepare for and be able to engage in the retail sale of any
13 product regulated by this article on that date and at that
14 time.

§11-16-29. Severability.

1 The provisions of subdivision (cc), section ten, article two,
2 chapter two of this code, shall apply to the provisions of this
3 article to the same extent as if the same were set forth in
4 extenso herein and to the extent therein provided the
5 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. Wilkins
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1986.

Todd C. Hulls
.....
Clerk of the Senate

Donald L. Hopp
.....
Clerk of the House of Delegates

Sam Tankership
.....
President of the Senate

Joseph P. Allright
.....
Speaker House of Delegates

The within *approved* this the *25th*
March
day of 1986.

Luha. Prange
.....
Governor



PRESENTED TO THE
GOVERNOR

Date 3/21/86

Time 4:23 p.m.

OFFICE OF THE SECRETARY OF
WEST VIRGINIA

THIS DATE 3/24/86

RECEIVED

1986 MAR 23 PM 4:27

DEPT. OF STATE
SECRETARIAT OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86