WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

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ENROLLED

HOUSE BILL No. 2764

(By Mr. Speaker, Mr. Chamber, and)
Delegate Honours

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Passed ........................................ March 9 1991

In Effect ..................................... 90 days from Passage
AN ACT to amend and reenact sections three, six, nine, twelve, thirteen, fifteen, seventeen, eighteen, twenty-one and twenty-six, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to regulation of retail sales by resident manufacturers of nonintoxicating beer.

Be it enacted by the Legislature of West Virginia:

That sections three, six, nine, twelve, thirteen, fifteen, seventeen, eighteen, twenty-one and twenty-six, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

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

3 (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 trans-shipping from a foreign country nonintoxicating beer for sale at wholesale to any licensed distributor.
(2) “Brewpub” shall mean a place of manufacture of nonintoxicating beer owned by a resident brewer, subject to federal regulations and guidelines, a portion of which premises are designated for retail sales.

(3) “Commissioner” shall mean the West Virginia alcohol beverage control commissioner.

(4) “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.

(5) “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.

(6) “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.

(7) “Person” shall mean and include an individual, firm, partnership, limited partnership, association or corporation.

(8) “Resident brewer” shall mean any person, firm, association, partnership, or corporation whose principal place of business is within the state.

(9) “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.
§11-16-6. License in one capacity only; no connection between different licensees; when brewer may act as distributor; credit and rebates proscribed; brewpub.

(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.

Notwithstanding paragraphs (a) and (b) above, a brewpub may manufacture and offer for retail sale non-intoxicating beer so long as the sale of the non-intoxicating beer is limited to the brewpub premises.

§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of non-intoxicating beer permitted; distributors; brewers; brewpubs.

(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 less 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.

(4) In the case of a brewpub, the license fee shall be one thousand dollars for each place of manufacture.

§11-16-12. Bond of brewer, distributor, brewpub 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 or brewpub, 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-five thousand dollars conditioned as hereinabove in this subsection provided and any bond furnished pursuant hereto shall be forfeited to the state in the full amount of said bond upon revocation of license of any such brewer or distributor. Such money received by the state shall be credited to the state fund, general revenue.

(b) Each Class A retail dealer, in addition to furnishing the information required by this article, shall furnish as prerequisite to obtaining a license, a bond with some solvent surety company as surety, to be approved by the commissioner, payable to the state of West Virginia, in the amount not less than five hundred dollars, nor more than one thousand dollars, within the discretion of the commissioner. All such bonds shall be conditioned 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 distribution, sale and dispensing of nonintoxicating beer, and shall be forfeited to the state in the full amount of said bond upon the revocation of the license of any such retail dealer. Such money received by the state shall be credited to the state fund, general revenue.

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


(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 nonin-
toxicating 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 or operator of a
brewpub who manufactures or produces nonintoxicating
beer within this state shall file a report in writing,
under oath, to the tax commissioner, in the form
prescribed by the tax commissioner, stating its total
estimated sales, or in the case of a brewpub, its total
estimated production of nonintoxicating beer within this
state during that month, and at the same time shall pay
the tax levied by this article on such estimated monthly
sales or production. 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 tax commissioner, in the
form prescribed by the tax 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 tax 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 or operator of a brewpub who files a report
under this subsection may adjust its monthly estimated
sales or purchases or production report to reports by
filing amended reports by the twenty-fifth day of the
reporting month.

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

(d) Any brewer or distributor or operator of a
brewpub 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 or
production 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 and operators of brew-
pubs 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 tax commissioner.

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

Every brewer, manufacturer or distributor or operator of a brewpub 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 tax commissioner, and the tax commissioner shall have authority to inspect, by himself or through the commissioner's 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 or operator of a brewpub. The tax commissioner may require the production, within this state at such time and place as the commissioner 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 tax commissioner or the commissioner's 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 tax 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 tax commissioner shall have the authority 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 tax commissioner as hereinafter provided. The tax
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 tax commissioner, such person, if he or she deems themselves aggrieved thereby, shall so notify the tax commissioner and shall request a hearing thereon and the tax commissioner shall set a hearing into the matters raised by such notice, which hearing shall be held as a contested case pursuant to article ten of this chapter, except that the licensee shall have the right of appeal from the tax commissioner's findings only to the circuit court of Kanawha County, West Virginia. Whether the finding of the tax 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.

§11-16-17. Container labeling.

It shall be unlawful for any brewer, brewpub, 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 pur-
chaser 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 brewpub or his,
her, its or their agents, to transport or deliver nonintox-
cicating 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 sponsor-
ing 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 partici-
pation 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 or 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 serve wine;
(11) For any retail licensee to sell or dispense
nonintoxicating beer, as defined in this article, pur-
chased 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 consump-
tion 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 consump-
tion 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 nonintox-
icating 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 commis-
sioner 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 submit-
ting 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.
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.

§11-16-21. 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 compet-
tively 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 agree-
ment 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 brewpub or distributor, or any
officer, agent or representative of any brewer or
brewpub 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 brewpub or distributor, or any officer, agent or representative of any brewer or brewpub or distributor, to cancel, terminate or rescind without due regard for the equities of such brewer or brewpub 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 or brewpub 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 or brewpub shall be given sixty days to approve or disapprove of such sale or transfer. If the brewer or brewpub 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 or brewpub shall disapprove of the sale or transfer to the prospective
franchisee, transferee or purchaser, such brewer or
brewpub 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 or brewpub. 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 or brewpub. Nor may the brewer
or brewpub 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 or brewpub's or 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, trans-
ferree or purchaser. In the event the issue be not resolved
within twenty days from the date of such disapproval,
either the brewer, brewpub, 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 arbitra-
tion 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 arbitra-
tor may be appointed by said chief judge upon request
of either party. The arbitrators so appointed shall
promptly hear and determine and the questions submit-
ted 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 or brewpub 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 or brewpub shall constitute grounds for the forfeiture of the bond furnished by such brewer or brewpub 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 or brewpub and such distributor, and, in granting an injunction to a distributor, the court shall provide that the brewer or brewpub so enjoined shall not supply the customers or territory of the distributor while the injunction is in effect.

§11-16-26. Municipal license tax.

1 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 or operator of a brewpub 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.

In the case of a brewpub, such municipal tax shall not exceed the same proportions of taxation as the other licensees.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within this the day of , 1991.

Governor