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WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

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ENROLLED

HOUSE BILL No. 2764

(By Mr. Speaker Mr. Chambers, and
Delegate Houshous)

— ● —

Passed March 9, 1991

In Effect 90 days from Passage

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H. B. 2764

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE HOUVOURAS)

[Passed March 9, 1991; in effect ninety 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
2 context clearly requires differently:

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

9 (2) "Brewpub" shall mean a place of manufacture of
10 nonintoxicating beer owned by a resident brewer,
11 subject to federal regulations and guidelines, a portion
12 of which premises are designated for retail sales.

13 (3) "Commissioner" shall mean the West Virginia
14 alcohol beverage control commissioner.

15 (4) "Distributor" shall mean and include any person
16 jobbing or distributing nonintoxicating beer to retailers
17 at wholesale and whose warehouse and chief place of
18 business shall be within this state.

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

32 (6) "Original container" shall mean the container used
33 by the brewer at the place of manufacturing, bottling
34 or otherwise producing nonintoxicating beer for sale at
35 wholesale.

36 (7) "Person" shall mean and include an individual,
37 firm, partnership, limited partnership, association or
38 corporation.

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

42 (9) "Retailer" shall mean any person selling, serving,
43 or otherwise dispensing nonintoxicating beer and all
44 products regulated by this article, including, but not
45 limited to, any malt cooler, at his established and
46 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.

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

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

28 Notwithstanding paragraphs (a) and (b) above, a
29 brewpub may manufacture and offer for retail sale non-
30 intoxicating beer so long as the sale of the non-
31 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 nonintoxicating beer permitted; distributors; brewers; brewpubs.

1 (a) There is hereby levied and imposed an annual

2 license tax upon all dealers in and of nonintoxicating
3 beer as defined by this article, which license period shall
4 begin on the first day of July of each year and end on
5 the thirtieth day of June of the following year, and, if
6 granted for a less period the same shall be computed
7 semiannually in proportion to the remainder of the fiscal
8 year as follows:

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

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

28 In the case of a Class B retailer, the fee for a Class
29 B license authorizing the sale of both chilled and
30 unchilled beer shall be one hundred fifty dollars for each
31 place of business. A Class B license shall authorize the
32 licensee to sell nonintoxicating beer at retail in bottles,
33 cans or other sealed containers only, and only for
34 consumption off the licensed premises. Sales under this
35 license to any person at any one time must be in less
36 quantities than five gallons: *Provided*, That a Class B
37 retailer may sell to a consumer, for personal use and not
38 for resale, draught beer in quantities of one-eighth, one-
39 fourth and one-half barrels in the original containers.
40 Such license may be issued only to the proprietor or
41 owner of a grocery store. For the purpose of this article
42 the term "grocery store" means and includes any retail

43 establishment commonly known as a grocery store or
44 delicatessen, where food or food products are sold for
45 consumption off the premises, and shall include and
46 mean a separate and segregated portion of any other
47 retail store which is dedicated solely to the sale of food,
48 food products and supplies for the table for consumption
49 off the premises. The commissioner may promulgate
50 rules and regulations necessary to carry this provision
51 into effect.

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

54 (3) In the case of a brewer with its principal place of
55 business located in this state, the license fee shall be one
56 thousand five hundred dollars for each place of
57 manufacture.

58 (4) In the case of a brewpub, the license fee shall be
59 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.**

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

20 nor more than five thousand dollars for each place of
21 business licensed and conducted within the state, the
22 amount of such bond, between the minimum and
23 maximum amounts, to be determined in the discretion
24 of the commissioner. In the case of brewers shipping
25 nonintoxicating beer into the state, any brewer must
26 also furnish a bond in a penalty of not less than five
27 thousand dollars nor more than twenty-five thousand
28 dollars conditioned as hereinabove in this subsection
29 provided and any bond furnished pursuant hereto shall
30 be forfeited to the state in the full amount of said bond
31 upon revocation of license of any such brewer or
32 distributor. Such money received by the state shall be
33 credited to the state fund, general revenue.

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

51 (c) Upon the revocation of the license of any Class A
52 retail dealer by the commissioner or by any court of
53 competent jurisdiction, the commissioner or the clerk of
54 said court shall notify the prosecuting attorney of the
55 county wherein such retail dealer's place of business is
56 located, or the prosecuting attorney of the county
57 wherein the licensee resides, of such revocation, and,
58 upon receipt of said notice, it shall be the duty of such
59 prosecuting attorney forthwith to institute appropriate
60 proceedings for the collection of the full amount of said

61 bond. Upon request of such prosecuting attorney, the
62 commissioner shall deliver the bond to him. Willful
63 refusal without just cause therefor by the prosecuting
64 attorney to perform said duty hereby imposed shall
65 subject him to removal from office by the circuit court
66 of the county for which said prosecuting attorney was
67 elected upon proper proceedings and proof in the
68 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
4 gallons and in like ratio on each part barrel of nonin-
5 toxicating beer manufactured in this state for sale
6 within this state, whether contained or sold in barrels,
7 bottles or other containers, and a like tax is hereby
8 levied and imposed upon all nonintoxicating beer
9 manufactured outside of this state and brought into this
10 state for sale within this state; but no nonintoxicating
11 beer manufactured, sold or distributed in this state is
12 subject to more than one barrel tax. The brewer
13 manufacturing or producing nonintoxicating beer
14 within this state for sale within this state shall pay the
15 barrel tax on such nonintoxicating beer, and, except as
16 provided otherwise, the distributor who is the original
17 consignee of nonintoxicating beer manufactured or
18 produced outside of this state, or who brings such
19 nonintoxicating beer into this state, shall pay the barrel
20 tax on such nonintoxicating beer manufactured or
21 produced outside of this state.

22 (b) On or before the tenth day of each month during
23 the license period, every brewer or operator of a
24 brewpub who manufactures or produces nonintoxicating
25 beer within this state shall file a report in writing,
26 under oath, to the tax commissioner, in the form
27 prescribed by the tax commissioner, stating its total
28 estimated sales, or in the case of a brewpub, its total
29 estimated production of nonintoxicating beer within this
30 state during that month, and at the same time shall pay
31 the tax levied by this article on such estimated monthly
32 sales or production. On or before the tenth day of each

33 month during the license period, every distributor who
34 is the original consignee of nonintoxicating beer
35 manufactured or produced outside this state or who
36 brings such beer into this state for sale shall file a report
37 in writing, under oath, to the tax commissioner, in the
38 form prescribed by the tax commissioner, stating its
39 total estimated purchases of such nonintoxicating beer
40 during that month, and at the same time shall pay the
41 tax thereon levied by this article for such estimated
42 monthly purchase: *Provided*, That the tax commissioner
43 may allow, or require, a brewer who manufactures or
44 produces nonintoxicating beer outside this state to file
45 the required report and pay the required tax on behalf
46 of its distributor or distributors. Any brewer or
47 distributor or operator of a brewpub who files a report
48 under this subsection may adjust its monthly estimated
49 sales or purchases or production report to reports by
50 filing amended reports by the twenty-fifth day of the
51 reporting month.

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

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

70 (e) Brewers and distributors and operators of brew-
71 pubs shall keep all records which relate to the sale or
72 purchase in this state of nonintoxicating beer for a
73 period of three years unless written approval for earlier

74 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.

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

38 commissioner shall notify the alcohol beverage control
39 commissioner of any such unpaid assessment.

40 Within ten days after receipt of notice of any addi-
41 tional amount claimed to be due from any person as
42 shown by an examination by the tax commissioner, such
43 person, if he or she deems themselves aggrieved thereby,
44 shall so notify the tax commissioner and shall request
45 a hearing thereon and the tax commissioner shall set a
46 hearing into the matters raised by such notice, which
47 hearing shall be held as a contested case pursuant to
48 article ten of this chapter, except that the licensee shall
49 have the right of appeal from the tax commissioner's
50 findings only to the circuit court of Kanawha County,
51 West Virginia. Whether the finding of the tax commis-
52 sioner is affirmed or reversed, such circuit court shall
53 enter an order accordingly and either party shall then
54 have the right of appeal to the supreme court of appeals
55 of the state.

§11-16-17. Container labeling.

1 It shall be unlawful for any brewer, brewpub,
2 manufacturer, distributor or retailer to have affixed
3 upon any beer, ale or other malt beverage or malt cooler
4 container, sold or for sale in this state, a label bearing
5 any design, picture or wording, indicating that the
6 contents of the container are brewed or manufactured
7 for one particular distributor or retailer or group of
8 retailers, or use any trademark other than that of a
9 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,
3 agents or employees to sell, give or dispense, or any
4 individual to drink or consume, in or on any licensed
5 premises or in any rooms directly connected therewith,
6 nonintoxicating beer or cooler on weekdays between the
7 hours of two o'clock a.m. and seven o'clock a.m., or
8 between the hours of two o'clock a.m. and one o'clock
9 p.m., on any Sunday, except in private clubs licensed
10 under the provisions of article seven, chapter sixty of

11 this code, where the hours shall conform with the hours
12 of sale of alcoholic liquors;

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

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

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

33 (5) For any brewer or distributor or brewpub or his,
34 her, its or their agents, to transport or deliver nonintox-
35 icating beer as defined in this article to any retail
36 licensee on Sunday;

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

51 pation by athletes or other persons who are minors,
52 unless specifically authorized by the commissioner;

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

56 (8) For any licensee except the holder of a license to
57 operate a private club issued under the provisions of
58 article seven, chapter sixty of this code, or a holder of
59 a license or a private wine restaurant issued under the
60 provisions of article eight of said chapter sixty, to
61 possess a federal license, tax receipt or other permit
62 entitling, authorizing or allowing such licensee to sell
63 liquor or alcoholic drinks other than nonintoxicating
64 beer;

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

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

91 (11) For any retail licensee to sell or dispense
92 nonintoxicating beer, as defined in this article, pur-
93 chased or acquired from any source other than a
94 distributor, brewer or manufacturer licensed under the
95 laws of this state;

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

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

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

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

116 (16) For any Class B retailer to permit the consump-
117 tion of nonintoxicating beer upon his licensed premises;

118 (17) For any Class A licensee, his, her, its or their
119 servants, agents or employees, or for any licensee by or
120 through such servants, agents or employees, to allow,
121 suffer or permit any person less than eighteen years of
122 age to loiter in or upon any licensed premises; except,
123 however, that the provisions of this subdivision shall not
124 apply where such person under the age of eighteen years
125 is in or upon such premises in the immediate company
126 of his or her parent or parents, or where and while such
127 person under the age of eighteen years is in or upon such
128 premises for the purpose of and actually making a
129 lawful purchase of any items or commodities therein

130 sold, or for the purchase of and actually receiving any
131 lawful service therein rendered, including the consump-
132 tion of any item of food, drink or soft drink therein
133 lawfully prepared and served or sold for consumption
134 on such premises;

135 (18) For any distributor to sell, offer for sale,
136 distribute or deliver any nonintoxicating beer outside
137 the territory assigned to such distributor by the brewer
138 or manufacturer of such nonintoxicating beer or to sell,
139 offer for sale, distribute or deliver any such nonintox-
140 icating beer to any retailer whose principal place of
141 business or licensed premises is within the assigned
142 territory of another distributor of such nonintoxicating
143 beer: *Provided*, That nothing herein shall be deemed to
144 prohibit sales of convenience between distributors
145 licensed in this state wherein one such distributor sells,
146 transfers or delivers to another such distributor a
147 particular brand or brands for sale at wholesale; and

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

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

171 (c) Nothing in this article nor any rule or regulation
172 of the commissioner shall prevent or be deemed to
173 prohibit any licensee from employing any person who is
174 at least eighteen years of age to serve in such licensee's
175 lawful employ, including the sale or delivery of nonin-
176 toxicating beer as defined in this article. With the prior
177 approval of the commissioner, a licensee whose principal
178 business is the sale of food or consumer goods or the
179 providing of recreational activities, including, but not
180 limited to, nationally franchised fast food outlets,
181 family-oriented restaurants, bowling alleys, drug stores,
182 discount stores, grocery stores, and convenience stores,
183 may employ persons who are less than eighteen years
184 of age but at least sixteen years of age: *Provided*, That
185 such person's duties shall not include the sale or delivery
186 of nonintoxicating beer or alcoholic liquors: *Provided*,
187 *however*, That the authorization to employ such persons
188 under the age of eighteen years shall be clearly
189 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.**

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

12 (1) The brewer recognizes that the distributor is free
13 to manage his business in the manner the distributor
14 deems best, and that this prerogative vests in the
15 distributor, subject to the provisions of this article, the
16 exclusive right to establish his or her selling prices, to

17 select the brands of beer he or she wishes to handle, and
18 to determine the efforts and resources which the
19 distributor will exert to develop and promote the sale
20 of the brewer's products handled by the distributor.
21 However, since the brewer does not expect that its
22 products handled by the distributor will be sold by
23 others in the territory assigned to the distributor, the
24 brewer is dependent upon the distributor alone for the
25 sale of such products in said territory. Consequently, the
26 brewer expects that the distributor will price compet-
27 itively the products handled by the distributor, devote
28 reasonable effort and resources to the sale of such
29 products and maintain a satisfactory sales level.

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

46 (b) It shall also be unlawful:

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

58 twenty-one of this article, or

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

81 (c) In the event a distributor desires to sell or transfer
82 his or her franchise, such distributor shall give to the
83 brewer or brewpub at least sixty days notice in writing
84 of such impending sale or transfer and the identity of
85 the person, firm or corporation to whom such sale or
86 transfer is to be made and such other information as the
87 brewer may reasonably request. Such notice shall be
88 made upon forms and contain such additional informa-
89 tion as the commissioner by rule or regulation shall
90 prescribe. A copy of such notice shall be forwarded to
91 the commissioner. The brewer or brewpub shall be
92 given sixty days to approve or disapprove of such sale
93 or transfer. If the brewer or brewpub neither approves
94 nor disapproves thereof within sixty days of the date of
95 receipt of such notice, the sale or transfer of such
96 franchise shall be deemed to be approved by such
97 brewer. In the event the brewer or brewpub shall
98 disapprove of the sale or transfer to the prospective

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

141 ted pursuant to the procedures established by the
142 American Arbitration Association and shall render
143 their decision with all reasonable speed and dispatch but
144 in no event later than twenty days after the conclusion
145 of evidence. Said decision shall include findings of fact
146 and conclusions of law and shall be based upon the
147 justice and equity of the matter. Each party shall be
148 given notice of such decision. If the decision of the
149 arbitrators be in favor of or in approval of the proposed
150 sale or transfer, the brewer or brewpub shall forthwith
151 agree to the same and shall immediately transfer the
152 franchise to the proposed franchisee, transferee or
153 purchaser, unless notice of intent to appeal such decision
154 is given the arbitrators and all other parties within ten
155 days of notification of such decision. If any such party
156 deems himself aggrieved thereby, such party shall have
157 a right to bring an appropriate action in circuit court.
158 Any and all notices given pursuant to this subsection
159 shall be given to all parties by certified or registered
160 mail, return receipt requested.

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

§11-16-26. Municipal license tax.

1 Any municipal corporation in this state shall have the
2 authority to levy a license tax under the provisions of
3 this article upon any retailer, distributor or brewer or
4 operator of a brewpub of nonintoxicating beer whose
5 place of business is situated within such municipality,
6 but the amount of the license tax levied by such

7 municipal corporation shall in no event exceed the
8 amount fixed herein to be levied by the state. Only one
9 municipal tax is to be so imposed and that only by the
10 municipality in which the place of business, or ware-
11 house, is located. Cities and incorporated towns are
12 hereby empowered to enact ordinances for the enforce-
13 ment of this article in conformity with the provisions of
14 the same: *Provided*, That in no case shall the rate of such
15 municipal license tax exceed the rate of such tax in
16 effect on the first day of January, one thousand nine
17 hundred eighty-six.

18 In the case of a brewpub, such municipal tax shall not
19 exceed the same proportions of taxation as the other
20 licensees.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Somer Heck

Chairman Senate Committee

Ernest C. Moore

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harrell Edwards

Clerk of the Senate

Donald L. Kopp

Clerk of the House of Delegates

Walter Burdette

President of the Senate

Boyd C. Cline

Speaker of the House of Delegates

The within approved this the 2nd
day of April, 1991.

Gaston Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/91

Time 10:15 am