

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 172

(SENATOR KESSLER (MR. PRESIDENT), *ORIGINAL SPONSOR*)

[PASSED APRIL 13, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB172

OFFICE OF THE CLERK
WEST VIRGINIA
SECRETARY OF STATE

2013 MAY -2 PM 3:31

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2013 MAY -2 PM 3: 31

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(SENATOR KESSLER (MR. PRESIDENT), *original sponsor*)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §11-16-3 and §11-16-8 of the Code of West Virginia, 1931, as amended, all relating to the Nonintoxicating Beer Act generally; defining terms; expanding the definition of “person” for purposes of holding a nonintoxicating beer distributorship; allowing trusts, limited liability companies and associations to hold a distributor’s license; and requiring certain disclosures by applicants that are trusts, limited liability companies or associations.

Be it enacted by the Legislature of West Virginia:

That §11-16-3 and §11-16-8 of the Code of West Virginia, 1931, 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
2 clearly requires differently:

3 (1) “Brewer” or “manufacturer” means any person, firm,
4 association, partnership or corporation manufacturing,

5 brewing, mixing, concocting, blending, bottling or otherwise
6 producing or importing or transshipping from a foreign
7 country nonintoxicating beer or nonintoxicating craft beer for
8 sale at wholesale to any licensed distributor.

9 (2) "Brewpub" means a place of manufacture of
10 nonintoxicating beer owned by a resident brewer, subject to
11 federal and state regulations and guidelines, a portion of
12 which premises are designated for retail sales of
13 nonintoxicating beer or nonintoxicating craft beer by the
14 resident brewer owning the brewpub.

15 (3) "Class A retail license" means a retail license
16 permitting the retail sale of liquor at a freestanding liquor
17 retail outlet licensed pursuant to chapter sixty of this code.

18 (4) "Commissioner" means the West Virginia Alcohol
19 Beverage Control Commissioner.

20 (5) "Distributor" means and includes any person jobbing
21 or distributing nonintoxicating beer or nonintoxicating craft
22 beer to retailers at wholesale and whose warehouse and chief
23 place of business shall be within this state. For purposes of
24 a distributor only, the term "person" means and includes an
25 individual, firm, trust, partnership, limited partnership,
26 limited liability company, association or corporation. Any
27 trust licensed as a distributor or any trust that is an owner of
28 a distributor licensee, and the trustee or other persons in
29 active control of the activities of the trust relating to the
30 distributor license, is liable for acts of the trust or its
31 beneficiaries relating to the distributor license that are
32 unlawful acts or violations of article eleven of this chapter
33 notwithstanding the liability of trustees in article ten, chapter
34 forty-four-d of this code.

35 (6) "Freestanding liquor retail outlet" means a retail outlet
36 that sells only liquor, beer, nonintoxicating beer and other

37 alcohol-related products, as defined pursuant to section four,
38 article three-a, chapter sixty of this code.

39 (7) "Growler" means a glass ceramic or metal container
40 or jug, capable of being securely sealed, utilized by a
41 brewpub for purposes of off-premise sales of nonintoxicating
42 beer or nonintoxicating craft beer for personal consumption
43 not on a licensed premise and not for resale.

44 (8) "Nonintoxicating beer" means all natural cereal malt
45 beverages or products of the brewing industry commonly
46 referred to as beer, lager beer, ale and all other mixtures and
47 preparations produced by the brewing industry, including
48 malt coolers and nonintoxicating craft beers with no caffeine
49 infusion or any additives masking or altering the alcohol
50 effect containing at least one half of one percent alcohol by
51 volume, but not more than nine and six-tenths of alcohol by
52 weight, or twelve percent by volume, whichever is greater.
53 The word "liquor" as used in chapter sixty of this code does
54 not include or embrace nonintoxicating beer nor any of the
55 beverages, products, mixtures or preparations included within
56 this definition.

57 (9) "Nonintoxicating beer sampling event" means an
58 event approved by the commissioner for a Class A retail
59 license to hold a nonintoxicating beer sampling authorized
60 pursuant to section eleven-a of this article.

61 (10) "Nonintoxicating beer sampling day" means any
62 days and hours of the week where Class A retail licenses
63 may sell nonintoxicating beer pursuant to subdivision (1),
64 subsection (a), section eighteen of this article and is
65 approved, in writing, by the commissioner to conduct a
66 nonintoxicating beer sampling event.

67 (11) "Nonintoxicating craft beer" means any beverage
68 obtained by the natural fermentation of barley, malt, hops or

69 any other similar product or substitute and containing not less
70 than one half of one percent by volume and not more than
71 twelve percent alcohol by volume or nine and six-tenths
72 percent alcohol by weight with no caffeine infusion or any
73 additives masking or altering the alcohol effect.

74 (12) "Original container" means the container used by the
75 brewer at the place of manufacturing, bottling or otherwise
76 producing nonintoxicating beer for sale at wholesale.

77 (13) "Person" means and includes an individual, firm,
78 partnership, limited partnership, limited liability company,
79 association or corporation.

80 (14) "Resident brewer" means any brewer or
81 manufacturer of nonintoxicating beer or nonintoxicating craft
82 beer whose principal place of business and manufacture is
83 located in the State of West Virginia and which does not
84 brew or manufacture more than twenty-five thousand barrels
85 of nonintoxicating beer or nonintoxicating craft beer
86 annually, and does not self-distribute more than ten thousand
87 barrels thereof in the State of West Virginia annually.

88 (15) "Retailer" means any person selling, serving, or
89 otherwise dispensing nonintoxicating beer and all products
90 regulated by this article, including, but not limited to, malt
91 coolers at his or her established and licensed place of
92 business.

93 (16) "Tax Commissioner" means the Tax Commissioner
94 of the State of West Virginia or the commissioner's designee.

**§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, accompanied by a license
3 fee and, where required, a bond, and states under oath:

4 (1) The name and residence of the applicant, the duration
5 of such residency, that the applicant has been a resident of the
6 state for a period of two years preceding the date of the
7 application and that the applicant is twenty-one years of age.
8 If the applicant is a firm, association, partnership, limited
9 partnership, limited liability company or corporation, the
10 application shall include the residence of the members or
11 officers for a period of two years preceding the date of such
12 application. If a person, firm, partnership, limited
13 partnership, limited liability company, association,
14 corporation or trust applies for a license as a distributor, such
15 person, or in the case of a firm, partnership, limited
16 partnership, limited liability company, association or trust,
17 the members, officers, trustees or other persons in active
18 control of the activities of the limited liability company,
19 association or trust relating to the license, shall state under
20 oath that each has been a bona fide resident of the state for
21 four years preceding the date of such application. If the
22 applicant is a trust or has a trust as an owner, the trustees or
23 other persons in active control of the activities of the trust
24 relating to the license shall provide a certification of trust as
25 described in section one thousand thirteen, article ten, chapter
26 forty-four-d of this code. This certification of trust shall
27 include the excerpts described in subsection (c), section one
28 thousand thirteen, article ten, chapter forty-four-d of this code
29 and shall further state, under oath, the names, addresses,
30 Social Security numbers and birth dates of the beneficiaries
31 of the trust and certify that the trustee and beneficiaries are
32 twenty-one years of age or older. If a beneficiary is not
33 twenty-one years of age, the certification of trust must state
34 that such beneficiary's interest in the trust is represented by
35 a trustee, parent or legal guardian who is twenty-one years of
36 age and who will direct all actions on behalf of such
37 beneficiary related to the trust with respect to the distributor
38 until the beneficiary is twenty-one years of age. Any
39 beneficiary who is not twenty-one years of age or older shall
40 have his or her trustee, parent or legal guardian include in the

41 certification of trust and state under oath his or her name,
42 address, Social Security number and birth date.

43 (2) The place of birth of applicant, that he or she is a
44 citizen of the United States and of good moral character and,
45 if a naturalized citizen, when and where naturalized. If the
46 applicant is a corporation organized or authorized to do
47 business under the laws of the state, the application must state
48 when and where incorporated, the name and address of each
49 officer and that each officer is a citizen of the United States
50 and a person of good moral character. If the applicant is a
51 firm, association, limited liability company, partnership,
52 limited partnership, trust or has a trust as an owner, the
53 application shall provide the place of birth of each member of
54 the firm, association, limited liability company, partnership
55 or limited partnership and of the trustees, beneficiaries or
56 other persons in active control of the activities of the trust
57 relating to the license and that each member or trustee,
58 beneficiary or other persons in active control of the activities
59 of the trust relating to the license is a citizen of the United
60 States and if a naturalized citizen, when and where
61 naturalized, each of whom must qualify and sign the
62 application. The requirements as to residence do not apply to
63 the officers of a corporation applying for a retailer's license
64 but the officers, agent or employee who manages and is in
65 charge of the licensed premises shall possess all of the
66 qualifications required of an individual applicant for a
67 retailer's license including the requirement as to residence;

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

70 (4) The name of the owner of the building and, if the
71 owner is not the applicant, that the applicant is the actual and
72 bona fide lessee of the premises;

73 (5) That the place or building in which is proposed to do
74 business conforms to all applicable laws of health, fire and
75 zoning regulations and is a safe and proper place or building
76 not within three hundred feet of a school or church measured
77 from front door to front door, along the street or streets. This
78 requirement does not apply to a Class B license or to a place
79 occupied by a beer licensee so long as it is continuously so
80 occupied. The prohibition against locating a proposed
81 business in a place or building within three hundred feet of a
82 school does not apply to a college or university that has
83 notified the commissioner, in writing, that it has no objection
84 to the location of a proposed business in a place or building
85 within three hundred feet of the college or university;

86 (6) That the applicant is not incarcerated and has not
87 during the five years preceding the date of said application
88 been convicted of a felony;

89 (7) That the applicant is the only person in any manner
90 pecuniarily interested in the business so asked to be licensed
91 and that no other person is in any manner pecuniarily
92 interested during the continuance of the license; and

93 (8) That the applicant has not during five years preceding
94 the date of the application had a nonintoxicating beer license
95 revoked.

96 (b) In the case of an applicant that is trust or has a trust as
97 an owner, a distributor license may be issued only upon
98 submission by the trustees or other persons in active control
99 of the activities of the trust relating to the distributor license
100 of a true and correct copy of the written trust instrument to
101 the commissioner for his or her review. Notwithstanding any
102 provision of law to the contrary, the copy of the written trust
103 instrument submitted to the commissioner pursuant to this
104 section is confidential and is not a public record and is not
105 available for release pursuant to the West Virginia Freedom

106 of Information Act codified in article one, chapter twenty-
107 nine-b of this code.

108 (c) The provisions and requirements of subsection (a) of
109 this section are mandatory prerequisites for the issuance and
110 if any applicant fails to qualify, the license shall be refused.
111 In addition to the information furnished in any application,
112 the commissioner may make such additional and independent
113 investigation of each applicant and of the place to be
114 occupied as necessary or advisable and, for this reason, all
115 applications, with license fee and bond, must be filed thirty
116 days prior to the beginning of any fiscal year. If the
117 application is for an unexpired portion of a fiscal year, the
118 issuance of license may be withheld for such reasonable time
119 as necessary for investigation.

120 (d) The commissioner may refuse a license to any
121 applicant under the provisions of this article if the
122 commissioner is of the opinion:

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

125 (2) That the place to be occupied by the applicant is not
126 a suitable place or is within three hundred feet of any school
127 or church measured from front door to front door along the
128 street or streets. This requirement does not apply to a Class
129 B licensee or to a place now occupied by a beer licensee so
130 long as it is continuously so occupied. The prohibition
131 against locating any such place within three hundred feet of
132 a school does not apply to a college or university that has
133 notified the commissioner, in writing, that it has no objection
134 to the location of any such place within three hundred feet; or

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

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

Rocky Flamm
.....
Member ~~Chairman~~ Senate Committee

Danny Wells
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Joseph M. Minard
.....
Clerk of the Senate

Lucy S. Pol
.....
Clerk of the House of Delegates

Joseph P. ...
.....
President of the Senate

[Signature]
.....
Speaker of the House of Delegates

SECRETARY OF STATE
OFFICE

2013 MAY -2 PM 3:31

FILED

The within *is approved* this the *2nd*
Day of *May*, 2013.

Earl Ray Tomble
.....
Governor

PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 2:30pm