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.]
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.

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

(1) “Brewer” or “manufacturer” means any person, firm, association, partnership or corporation manufacturing.
brewing, mixing, concocting, blending, bottling or otherwise producing or importing or transshipping from a foreign country nonintoxicating beer or nonintoxicating craft beer for sale at wholesale to any licensed distributor.

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

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

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

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

(6) "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, beer, nonintoxicating beer and other...
alcohol-related products, as defined pursuant to section four, 
article three-a, chapter sixty of this code.

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

(8) "Nonintoxicating beer" means all natural 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 nonintoxicating craft beers with no caffeine
infusion or any additives masking or altering the alcohol
effect containing at least one half of one percent alcohol by
volume, but not more than nine and six-tenths of alcohol by
weight, or twelve percent by volume, whichever is greater.
The word "liquor" as used in chapter sixty of this code does
not include or embrace nonintoxicating beer nor any of the
beverages, products, mixtures or preparations included within
this definition.

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

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

(11) "Nonintoxicating craft beer" means any beverage
obtained by the natural fermentation of barley, malt, hops or
any other similar product or substitute and containing not less than one half of one percent by volume and not more than twelve percent alcohol by volume or nine and six-tenths percent alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect.

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

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

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

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

(16) "Tax Commissioner" means the Tax Commissioner 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.

(a) A license may be issued by the commissioner to any person who submits an application, accompanied by a license fee and, where required, a bond, and states under oath:
(1) The name and residence of the applicant, the duration of such residency, that the applicant has been a resident of the state for a period of two years preceding the date of the application and that the applicant is twenty-one years of age. If the applicant is a firm, association, partnership, limited partnership, limited liability company or corporation, the application shall include the residence of the members or officers for a period of two years preceding the date of such application. If a person, firm, partnership, limited partnership, limited liability company, association, corporation or trust applies for a license as a distributor, such person, or in the case of a firm, partnership, limited partnership, limited liability company, association or trust, the members, officers, trustees or other persons in active control of the activities of the limited liability company, association or trust relating to the license, shall state under oath that each has been a bona fide resident of the state for four years preceding the date of such application. If the applicant is a trust or has a trust as an owner, the trustees or other persons in active control of the activities of the trust relating to the license shall provide a certification of trust as described in section one thousand thirteen, article ten, chapter forty-four-d of this code. This certification of trust shall include the excerpts described in subsection (e), section one thousand thirteen, article ten, chapter forty-four-d of this code and shall further state, under oath, the names, addresses, Social Security numbers and birth dates of the beneficiaries of the trust and certify that the trustee and beneficiaries are twenty-one years of age or older. If a beneficiary is not twenty-one years of age, the certification of trust must state that such beneficiary’s interest in the trust is represented by a trustee, parent or legal guardian who is twenty-one years of age and who will direct all actions on behalf of such beneficiary related to the trust with respect to the distributor until the beneficiary is twenty-one years of age. Any beneficiary who is not twenty-one years of age or older shall have his or her trustee, parent or legal guardian include in the
certification of trust and state under oath his or her name, address, Social Security number and birth date.

(2) The place of birth of applicant, that he or she is a citizen of the United States and of good moral character and, if a naturalized citizen, when and where naturalized. If the applicant is a corporation organized or authorized to do business under the laws of the state, the application must state when and where incorporated, the name and address of each officer and that each officer is a citizen of the United States and a person of good moral character. If the applicant is a firm, association, limited liability company, partnership, limited partnership, trust or has a trust as an owner, the application shall provide the place of birth of each member of the firm, association, limited liability company, partnership or limited partnership and of the trustees, beneficiaries or other persons in active control of the activities of the trust relating to the license and that each member or trustee, beneficiary or other persons in active control of the activities of the trust relating to the license is a citizen of the United States and if a naturalized citizen, when and where naturalized, each of whom must qualify and sign the application. The requirements as to residence do not apply to the officers of a corporation applying for a retailer’s license but the officers, agent or employee who manages and is in charge of the licensed premises shall possess all of the qualifications required of an individual applicant for a retailer’s license including the requirement as to residence;

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

(4) The name of the owner of the building and, if the owner is not the applicant, that the applicant is the actual and bona fide lessee of the premises;
(5) That the place or building in which is proposed to do business conforms to all applicable laws of health, fire and zoning regulations and is a safe and proper place or building not within three hundred feet of a school or church measured from front door to front door, along the street or streets. This requirement does not apply to a Class B license or to a place occupied by a beer licensee so long as it is continuously so occupied. The prohibition against locating a proposed business in a place or building within three hundred feet of a school does not apply to a college or university that has notified the commissioner, in writing, that it has no objection to the location of a proposed business in a place or building within three hundred feet of the college or university;

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

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

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

(b) In the case of an applicant that is trust or has a trust as an owner, a distributor license may be issued only upon submission by the trustees or other persons in active control of the activities of the trust relating to the distributor license of a true and correct copy of the written trust instrument to the commissioner for his or her review. Notwithstanding any provision of law to the contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this section is confidential and is not a public record and is not available for release pursuant to the West Virginia Freedom
of Information Act codified in article one, chapter twenty-nine-b of this code.

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

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

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

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

Member
Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In 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 is approved this the 2nd Day of May, 2013.

Governor
PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time

[Signature]