Enrolled
Committee Substitute
for
Senate Bill 529

SENATORS TRUMP, TARR, AND RUCKER, original sponsors

[Passed March 8, 2019; in effect 90 days from passage]
THE WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 529


[Passed March 8, 2019; in effect 90 days from passage]
AN ACT to amend and reenact §11-16-3, §11-16-5, §11-16-6a, §11-16-6b, §11-16-8, §11-16-9, §11-16-10, §11-16-12, and §11-16-17a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §11-16-6c and §11-16-11b, all relating to nonintoxicating beer generally; creating a temporary license for nonintoxicating beer floorplan extensions of existing licensee floorplans; implementing a fee for the license; removing the two growler limit per patron per day for licensees who sell growlers for off premises consumption; increasing allowable growler size to no larger than 128 ounces; providing for certain growler licensees to conduct complimentary samplings; providing a 30-day requirement to issue or deny a license application once the application is completed; implementing a $100 beer license operations fee and establishing a special revenue account; implementing a reactivation fee for licensees that fail to timely file their renewal applications and pay their license fees; creating a one-day special license for certain nonprofit and tax exempt entities hosting artistic, athletic, charitable, educational, or religious events to purchase and sell nonintoxicating beer and nonintoxicating craft beer; allowing nonintoxicating beer and nonintoxicating craft beer to have a maximum alcohol content of 15 percent by volume and 11.9 percent by weight; providing limitations on special licenses; setting forth requirements for special licenses; providing for a Class B licensee privilege for nonintoxicating beer or nonintoxicating craft beer sales at a designated parking area; implementing a license fee; licensing brewers, resident brewers, and distributor representatives; providing for transportation permits for nonintoxicating beer and nonintoxicating craft beer; requiring nonintoxicating beer label registration; implementing an operational fee for licensed representatives, transportation permits, and container label registration; removing the bond requirements for brewers, resident brewers, distributors, and Class S licenses; and defining terms.

Be it enacted by the Legislature of West Virginia:
ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

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

(1) “Brand” means a nonintoxicating beer product manufactured, brewed, mixed, concocted, blended, bottled or otherwise produced, imported, or transshipped by a brewer or manufacturer, the labels of which have been registered and approved by the commissioner, that is being offered for sale or sold in West Virginia by a distributor who has been appointed in a valid franchise agreement or a valid amendment thereto.

(2) “Brewer” or “manufacturer” means any person manufacturing, otherwise producing, importing, or transshipping nonintoxicating beer or nonintoxicating craft beer for sale at wholesale to any licensed distributor. Brewer or manufacturer may be used interchangeably throughout this article. A brewer may obtain only one brewer’s license for its nonintoxicating beer or nonintoxicating craft beer.

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

(4) “Class A retail license” means a retail license permitting the retail sale of liquor at a freestanding liquor retail outlet licensed pursuant to chapter 60 of this code.

(5) “Class B retail license” means a retail license permitting the retail sale of liquor at a mixed retail liquor outlet licensed pursuant to chapter 60 of this code.

(6) “Commissioner” means the West Virginia Alcohol Beverage Control Administration Commissioner.

(7) “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 §11-11-1 et seq. of this code notwithstanding the liability of trustees in §44D-10-1 et seq. of this code.

(8) “Franchise agreement” means the written agreement between a brewer and a distributor that is identical as to terms and conditions between the brewer and all its distributors, which agreement has been approved by the commissioner. The franchise agreement binds the parties so that a distributor, appointed by a brewer, may distribute all of the brewer’s nonintoxicating beer products, brands or family of brands imported and offered for sale in West Virginia, including, but not limited to, existing brands, line extensions, and new brands all in the brewer’s assigned territory for the distributor. All brands and line extensions being imported or offered for sale in West Virginia must be listed by the brewer in the franchise agreement or a written amendment to the franchise agreement. A franchise agreement may be amended by mutual written agreement of the parties as approved by the commissioner with identical terms and conditions for a brewer and all of its distributors. Any approved amendment to the franchise agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually agree in writing to cancel a franchise agreement. A distributor terminated by a brewer as provided in this article and the promulgated rules no longer has a valid franchise agreement. If a brewer has reached an agreement to cancel a distributor or has terminated a distributor, then a brewer may appoint a successor distributor who accedes to all the rights of the cancelled or terminated distributor.

(9) “Franchise distributor network” means the distributors who have entered into a binding written franchise agreement, identical as to terms and conditions, to distribute nonintoxicating beer products, brands, and line extensions in an assigned territory for a brewer. A brewer may
only have one franchise distributor network: Provided, That a brewer that has acquired the manufacturing, bottling, or other production rights for the sale of nonintoxicating beer at wholesale from a selling brewer as specified in §11-16-21(a)(2) of this code shall continue to maintain and be bound by the selling brewer’s separate franchise distributor’s network for any of its existing brands, line extensions, and new brands.

(10) “Freestanding liquor retail outlet” means a retail outlet that sells only liquor, wine, beer, nonintoxicating beer, and other alcohol-related products, as defined pursuant to §60-3A-4 of this code.

(11) “Growler” means a container or jug that is made of glass, ceramic, metal, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and must be capable of being securely sealed. The growler is utilized by an authorized licensee for purposes of off-premise sales only of nonintoxicating beer or nonintoxicating craft beer for personal consumption not on a licensed premise and not for resale. Notwithstanding any other provision of this code to the contrary, a securely sealed growler is not an open container under federal, state, and local law. A growler with a broken seal is an open container under federal, state, and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. The secure sealing of a growler requires the use of a tamper-resistant seal, security tape, or other material, as approved by the commissioner, placed on or over the growler’s opening, which seal, security tape or other material is clearly marked with the date of the secure sealing by the authorized licensee who is selling the growler.

(12) “Line extension” means any nonintoxicating beer product that is an extension of brand or family of brands that is labeled, branded, advertised, marketed, promoted, or offered for sale with the intent or purpose of being manufactured, imported, associated, contracted, affiliated, or otherwise related to a brewer’s existing brand through the use of a brewer, its subsidiaries, parent entities, contracted entities, affiliated entities, or other related entities. In determining whether a nonintoxicating beer product is a line extension, the commissioner may consider, but is not limited
to, the following factors: Name or partial name; trade name or partial trade name; logos; copyrights; trademarks or trade design; product codes; advertising promotion; or pricing.

(13) “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 11.9 percent of alcohol by weight, or 15 percent alcohol by volume, whichever is greater. The word “liquor” as used in chapter 60 of this code does not include or embrace nonintoxicating beer nor any of the beverages, products, mixtures, or preparations included within this definition.

(14) “Nonintoxicating beer floor plan extension” means a temporary one-day extension of an existing Class A licensee’s floor plan to a contiguous, adjoining and bounded area, such as a parking lot or outdoor area, which shall for the temporary period encompass the licensee’s licensed premises; further such license shall be endorsed or approved by the county or municipality where the license is located; such license shall be in good standing with the commissioner, and further such temporary event shall cease on or before midnight of the approved temporary one-day event.

(15) “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 §11-16-11a of this code.

(16) “Nonintoxicating beer sampling day” means any days and hours of the week where Class A retail licensees may sell nonintoxicating beer pursuant to §11-16-11a and §11-16-18(a)(1) of this code, and is approved, in writing, by the commissioner to conduct a nonintoxicating beer sampling event.

(17) “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 15 percent alcohol by volume or 11.9 percent alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect.

(18) “Original container” means the container used by a resident brewer or brewer at the place of manufacturing, bottling, or otherwise producing nonintoxicating beer or nonintoxicating craft beer for sale at wholesale.

(19) “Person” means and includes an individual, firm, partnership, limited partnership, limited liability company, association, or corporation.

(20) “Private club” means a license issued pursuant to §60-7-1 et seq. of this code.

(21) “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 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer annually, and does not self-distribute more than 10,000 barrels thereof in the State of West Virginia annually.

(22) “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.

(23) “Tax Commissioner” means the Tax Commissioner of the State of West Virginia or the commissioner’s designee.

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

No person shall manufacture, tender, sell, possess for sale, transport, or distribute nonintoxicating beer except in accordance with the provisions of this article, and after first obtaining a state license therefor, as provided in this article.

§11-16-6a. Brewer and resident brewer license to manufacture, sell, and provide complimentary samples.

(a) Legislative findings. — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption,
transportation, and storage of nonintoxicating beer and nonintoxicating craft beer and its industry
in this state in order to protect the public health, welfare, and safety of the citizens of this state,
and promote hospitality and tourism. Therefore, this section authorizes a licensed brewer or
resident brewer with its principal place of business and manufacture located in this state to have
certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer
manufactured in this state for the benefit of the citizens of this state, the state’s growing brewing
industry, and the state’s hospitality and tourism industry, all of which are vital components for the
state’s economy.

(b) Sales of nonintoxicating beer. — A licensed brewer or resident brewer with its principal
place of business and manufacture located in the State of West Virginia may offer only
nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident
brewer for retail sale to customers from the brewer’s or resident brewer’s licensed premises for
consumption off of the licensed premises only in the form of kegs, bottles, cans, or growlers for
personal consumption and not for resale. A licensed brewer or resident brewer may not sell, give
or furnish nonintoxicating beer for consumption on the premises of the principal place of business
and manufacture located in the State of West Virginia, except for the limited purpose of
complimentary samples as permitted in subsection (c) of this section.

(c) Complimentary samples. — A licensed brewer or resident brewer with its principal
place of business and manufacture located in the State of West Virginia may only offer
complimentary samples of nonintoxicating beer or nonintoxicating craft beer brewed at the
brewer’s or resident brewer’s principal place of business and manufacture located in the State of
West Virginia. The complimentary samples may be no greater than two ounces per sample per
patron, and a sampling shall not exceed 10 complimentary two-ounce samples per patron per
day. A licensed brewer or resident brewer providing complimentary samples shall provide
complimentary food items to the patron consuming the complimentary samples; and prior to any
sampling, verify, using proper identification, that the patron sampling is 21 years of age or over and that the patron is not visibly intoxicated.

(d) Retail sales. — Every licensed brewer or resident brewer under this section shall comply with all the provisions of this article as applicable to nonintoxicating beer retailers when conducting sales of nonintoxicating beer or nonintoxicating craft beer and shall be subject to all applicable requirements and penalties in this article.

(e) Payment of taxes and fees. — A licensed brewer or resident brewer under this section shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(f) Advertising. — A licensed brewer or resident brewer under this section may advertise a particular brand or brands of nonintoxicating beer or nonintoxicating craft beer produced by the licensed brewer or resident brewer and the price of the nonintoxicating beer or nonintoxicating craft beer subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance.

(g) Growler requirements. — A licensed brewer or resident brewer under this section must fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensed brewer or resident brewer under this section must sanitize, fill, securely seal, and label any growler prior to its sale. A licensed brewer or resident brewer under this section may only offer for retail sale growlers no larger than 128 fluid ounces of nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident brewer for personal consumption off of the licensed premises and not for resale. A licensed brewer or resident brewer under this section may refill a growler subject to the requirements of this section. A licensed brewer or resident brewer shall visually inspect any growler before filling or refilling it. A licensed brewer or resident brewer may not fill or refill any growler that appears to be cracked, broken, unsafe or otherwise unfit to serve as a sealed beverage container.
(h) *Growler labeling.* — A licensed brewer or resident brewer under this section selling growlers shall affix a conspicuous label on all sold and securely sealed growlers listing the name of the licensee selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer in the growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating craft beer in the growler and the date the growler was filled or refilled, and, further, all labeling on the growler shall be consistent with all federal labeling and warning requirements.

(i) *Growler sanitation.* — A licensed brewer or resident brewer authorized under this section shall clean and sanitize all growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensed brewer or resident brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines, barrel tubes and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under §11-16-23 of this code.

(j) *Fee.* — There is no additional fee for a licensed brewer or resident brewer authorized under this section to sell growlers.

(k) *Limitations on licensees.* — To be authorized under this section, a licensed brewer or resident brewer may not produce more than 25,000 barrels per calendar year at the brewer’s or resident brewer’s principal place of business and manufacture located in the State of West Virginia. No more than one brewer or resident brewer license may be issued to a single person or entity and no person may hold both a brewer and a resident brewer license. A licensed brewer or resident brewer under this section may only conduct tours, give complimentary samples and sell growlers during the hours of operation set forth in §11-16-18(a)(1) of this code. A licensed brewer or resident brewer authorized under this section shall be subject to the applicable penalties under §11-16-23 of this code for violations of this section.

(l) *Rules.* — The commissioner, in consultation with the Bureau for Public Health concerning sanitation, is authorized to propose rules for legislative approval, pursuant to §29A-3-1 et seq. of this code, to implement this section.
§11-16-6b. Brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee, and Class B retail licensee’s authority to sell growlers.

(a) Legislative findings. — The Legislature hereby finds that it is in the public interest to regulate, control and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of nonintoxicating beer and nonintoxicating craft beer and its industry in this state in order to protect the public health, welfare, and safety of the citizens of this state and promote hospitality and tourism. Therefore, this section authorizes a licensed brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee, or Class B retail licensee to have certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer manufactured in this state for the benefit of the citizens of this state, the state’s growing brewing industry, and the state’s hospitality and tourism industry, all of which are vital components for the state’s economy.

(b) Sales of nonintoxicating beer. — A licensed brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee, or Class B retail licensee who pays the fee in subsection (i) of this section and meets the requirements of this section may offer nonintoxicating beer or nonintoxicating craft beer for retail sale to patrons from their licensed premises in a growler for personal consumption only off of the licensed premises and not for resale. Prior to the sale, the licensee shall verify, using proper identification, that any patron purchasing nonintoxicating beer or nonintoxicating craft beer is 21 years of age or over and that the patron is not visibly intoxicated. A licensee authorized under this section may not sell, give or furnish alcoholic liquors, including wine, for consumption off of its licensed premises, unless it is a private club licensed to sell sealed wine for consumption off of the licensed premises and meets the requirements set out in §60-8-3(j) and §60-8-3(l) of this code, for the sale of wine, not liquor.

(c) Retail sales. — Every licensee authorized under this section shall comply with all the provisions of this article as applicable to nonintoxicating beer retailers when conducting sales of
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nonintoxicating beer or nonintoxicating craft beer and shall be subject to all applicable
requirements and penalties in this article.

(d) Payment of taxes and fees. — A licensee authorized under this section shall pay all
taxes and fees required of licensed nonintoxicating beer retailers, in addition to any other taxes
and fees required, and meet applicable licensing provisions as required by this chapter and by
rule of the commissioner.

(e) Advertising. — A licensee authorized under this section may advertise a particular
brand or brands of nonintoxicating beer or nonintoxicating craft beer and the price of the
nonintoxicating beer or nonintoxicating craft beer subject to state and federal requirements or
restrictions. The advertisement may not encourage intemperance.

(f) Growler requirements. — A licensee authorized under this section must fill a growler
and patrons are not permitted to access the secure area or fill a growler. A licensee authorized
under this section must sanitize, fill, securely seal, and label any growler prior to its sale. A
licensee authorized under this section may only offer for retail sale growlers no larger than 128
fluid ounces of nonintoxicating beer or nonintoxicating craft beer for personal consumption off of
the licensed premises and not for resale. A licensee under this section may refill a growler subject
to the requirements of this section. A licensee shall visually inspect any growler before filling or
refilling it. A licensee may not fill or refill any growler that appears to be cracked, broken, unsafe,
or otherwise unfit to serve as a sealed beverage container.

(g) Growler labeling. — A licensee authorized under this section selling growlers shall affix
a conspicuous label on all sold and securely sealed growlers listing the name of the licensee
selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer in the
growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating craft beer in
the growler, and the date the growler was filled or refilled, and, further, all labeling on the growler
shall be consistent with all federal labeling and warning requirements.
(h) Growler sanitation. — A licensed brewer or resident brewer authorized under this section shall clean and sanitize all growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensed brewer or resident brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under §11-16-23 of this code.

(i) Fees. — Commencing July 1, 2015, and every July 1 thereafter, there is an annual $100 nonrefundable fee for a licensee, except for a licensed brewpub, to sell growlers as provided by this section. The licensee must be in good standing with the state at the time of paying the fee.

(j) Complimentary samples. — A licensee authorized under this section may provide complimentary samples which may be no greater than one ounce per sample and a sampling shall not exceed three different nonintoxicating beer or nonintoxicating craft beer complimentary one-ounce samples per patron per day. A licensee authorized under this section providing complimentary samples shall prior to any sampling verify, using proper identification, that the patron sampling is 21 years of age or over and that the patron is not visibly intoxicated. All nonintoxicating beer and nonintoxicating craft beer utilized for sampling purposes must be purchased from the licensee’s inventory.

(k) Limitations on licensees. — A licensee under this section may only sell growlers during the hours of operation set forth in §11-16-18(a)(1) of this code. Any licensee licensed under this section must maintain a secure area for the sale of nonintoxicating beer or nonintoxicating craft beer in a growler. The secure area must only be accessible by the licensee. Any licensee licensed under this section shall be subject to the applicable penalties under §11-16-23 of this code for violations of this section.

(l) Nonapplicability of certain statutes. — Notwithstanding any other provision of this code to the contrary, licensees under this section are permitted to break the seal of the original container for the limited purpose of filling a growler or providing complimentary samples as
provided in this section. Any unauthorized sale of nonintoxicating beer or nonintoxicating craft beer or any consumption not permitted on the licensee’s licensed premises is subject to penalties under this article.

(m) *Rules.* — The commissioner is authorized to propose rules for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

§11-16-6c Class B retail dealer which is a grocery store, mobile application, or web-based sales privilege permit; fee.

(a) A Class B retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer and who operates a grocery store containing over $100,000 of fresh produce and saleable food and food products fit for human consumption in a combination of displayed and stored inventory may apply for a Class B license privilege granting the licensee the ability to complete the sale of such nonintoxicating beer or nonintoxicating craft beer in the original sealed container for off-premises consumption to a person purchasing the nonintoxicating beer or nonintoxicating craft beer from a vehicle:

(1) If the vehicle is parked in a licensed parking area which is contiguous to the Class B licensee’s licensed premises; or

(2) If the vehicle is parked in a licensed parking area which is within 500 feet of the Class B licensee.

(b) The parking area referenced in subsection (a) of this section shall be designated by signage solely for the use of persons who have previously ordered items including, but not limited to, nonintoxicating beer or nonintoxicating craft beer using a mobile application or web-based software program.

(c) No nonintoxicating beer or nonintoxicating craft beer may be loaded into a vehicle under this section unless the Class B licensee or such licensee’s staff have verified that both the person placing the order, and, if different from the person placing the order, the person picking up the order are 21 years of age or older and not noticeably intoxicated; and
(d) To operate under this section, a Class B retail dealer licensee must be in good standing with the commissioner, apply, qualify, pay the Class B license privilege fee and obtain the permit for the Class B licensee privilege for nonintoxicating beer or nonintoxicating craft beer sales at a designated parking area. The Class B license privilege permit nonrefundable and non-prorated annual fee is $250. For purposes of criminal enforcement of the provisions of this article, persons placing orders and picking up orders are deemed to be purchasers.

(e) The licensee shall be subject to all requirements, penalties and sanctions of this article.

§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 21 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 §44D-10-1013 of this code. This certification of trust shall include the excerpts described in §44D-10-1013(e), 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 21 years of age or older. If a beneficiary is not 21 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 21 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 21 years of age. Any beneficiary who is not 21 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 300 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 300 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 300 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 a 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 29B-1-1 et seq. 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 submitted with all true and correct information. For the purpose of conducting such independent investigation, the commissioner may withhold the granting or refusal to grant such license for a 30-day period or until the applicant has completed the conditions set forth in this section. If it shall appear that such applicant meets the requirements in the code and the rules, including, but not limited to, being a suitable person of good reputation and morals; having made no false statements or material misrepresentations; involving no hidden ownership; and having no persons with an undisclosed pecuniary interest contained in such application; and if there are no other omissions or failures by the applicant to complete the application, as determined by the commissioner, the commissioner shall issue a license authorizing the applicant to sell nonintoxicating beer or nonintoxicating craft beer.

(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 300 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 300 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 300 feet;

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

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

(a) All retail dealers, distributors, brewpubs, brewers and resident brewers of nonintoxicating beer and of nonintoxicating craft beer shall pay an annual fee to maintain an active
license as required by this article. The license period begins on July 1 of each year and ends on
June 30 of the following year. If the license is granted for a shorter period, then the license fee
shall be computed semiannually in proportion to the remainder of the fiscal year: Provided, That
if a licensee fails to complete a renewal application and make payment of its annual license fee
in renewing its license on or before June 30 of any subsequent year, after initial application, then
an additional $150 reactivation fee shall be charged and paid by the licensee; the fee may not be
prorated or refunded, prior to the processing of any renewal application and applicable full year
annual license fee; and furthermore a licensee who continues to operate upon the expiration of
its license is subject to all fines, penalties and sanctions available in §11-16-23 of this code, all
as determined by the commissioner.

(b) The annual license fees are as follows:

(1) Retail dealers shall be divided into two classes: Class A and Class B.

(A) For a Class A retail dealer, the license fee is $150 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, is $150:
Provided, That railroads operating in this state may dispense nonintoxicating beer upon payment
of an annual license tax of $10 for each dining, club or buffet car in which the beer is dispensed.
Class A licenses issued for railroad dining, club or buffet cars authorize the licensee to
sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All
other Class A licenses authorize the licensee to sell nonintoxicating beer at retail for consumption
on or off the licensed premises.

(B) For a Class B retail dealer, the license fee, authorizing the sale of both chilled and
unchilled beer, is $150 for each place of business. A Class B license authorizes the licensee to
sell nonintoxicating beer at retail in bottles, cans or other sealed containers only, and only for
consumption off the licensed premises. A Class B retailer may sell to a patron, for personal use
and not for resale, quantities of draught beer in original containers that are no larger in size than
one-half barrel for off-premises consumption.

A Class B 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 any retail establishment commonly
known as a grocery store or delicatessen, and caterer or party supply store, where food or food
products are sold for consumption off the premises, and includes 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. Caterers or party supply stores are
required to purchase the appropriate licenses from the Alcohol Beverage Control Administration.

(2) For a distributor, the license fee is $1,000 for each place of business.

(3) For a brewer or a resident brewer with its principal place of business or manufacture
located in this state and who produces:

(A) Twelve thousand five hundred barrels or less of nonintoxicating beer or nonintoxicating
craft beer, the license fee is $500 for each place of manufacture;

(B) Twelve thousand five hundred one barrels and up to 25,000 barrels of nonintoxicating
beer or nonintoxicating craft beer, the license fee is $1,000 for each place of manufacture;

(C) More than 25,001 barrels of nonintoxicating beer or nonintoxicating craft beer, the
license fee is $1,500 for each place of manufacture.

(4) For a brewer whose principal place of business or manufacture is not located in this
state, the license fee is $1,500. The brewer is exempt from the requirements set out in subsections
(c), (d) and (e) of this section: Provided, That a brewer whose principal place of business or
manufacture is not located in this state that produces less than 25,000 barrels of nonintoxicating
beer or nonintoxicating craft beer may choose to apply, in writing, to the commissioner to be
subject to the variable license fees of subdivision (3), subsection (b) of this section and the
requirements set out in subsections (c), (d) and (e) of this section subject to investigation and
approval by the commissioner as to brewer requirements.
(5) For a brewpub, the license fee is $500 for each place of manufacture.

(c) As part of the application or renewal application and in order to determine a brewer or resident brewer’s license fee pursuant to this section, a brewer or resident brewer shall provide the commissioner, on a form provided by the commissioner, with an estimate of the number of nonintoxicating beer or nonintoxicating craft beer barrels and gallons it will produce during the year based upon the production capacity of the brewer’s or resident brewer’s manufacturing facilities, and the prior year’s production and sales volume of nonintoxicating beer or nonintoxicating craft beer.

(d) On or before July 15 of each year, every brewer or resident brewer who is granted a license shall file a final report, on a form provided by the commissioner, that is dated as of June 30 of each year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in barrels and gallons produced at its principal place of business and manufacture during the prior year.

(e) If the actual total production of nonintoxicating beer or nonintoxicating craft beer by the brewer or resident brewer exceeded the brewer’s or resident brewer’s estimate that was filed with the application or renewal for a brewer’s or resident brewer’s license for that period, then the brewer or resident brewer shall include a remittance for the balance of the license fee pursuant to this section that would be required for the final, higher level of production.

(f) Any brewer or resident brewer failing to file the reports required in subsections (c) and (d) of this section, and who is not exempt from the reporting requirements, shall, at the discretion of the commissioner, be subject to the penalties set forth in §11-16-23 of this code.

(g) Notwithstanding subsections (a) and (b) of this section, the license fee per event for a nonintoxicating beer floor plan extension is $100, and the fee may not be prorated or refunded, and must be accompanied with a license application, certification that the event meets certain requirements in the code and rules, and such other information as the commissioner may reasonably require, at least 15 days prior to the event, all as determined by the commissioner.
§11-16-10. Brewer's license for foreign corporation; application; bond; contents of application; limitations; licensed representatives for brewers, resident brewers, and distributors; annual license fee; renewal; suspension; license fee for sales representatives; transportation permits; container label registration; and Beer License Operations Fund created; and implementation operations of fee.

(a) A brewer's license shall be issued by the commissioner to a foreign corporation which submits an application therefor accompanied by the license fee hereinafter prescribed, a certified copy of the certificate of authority issued by the Secretary of State authorizing such foreign corporation to transact business in the state, and a certified copy of its most recent corporation charter. Such application shall be verified and shall state:

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

(2) The date of incorporation;

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

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

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

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

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

(c) The license fee for a brewer's license for a foreign corporation selling any nonintoxicating beer product within this state, whether or not its principal place of business be located in this state, shall be $1,500 per annum. The license period shall begin on July 1 of each year and end on June 30 of the following year, and if granted for a lesser period, the same shall be prorated semiannually in proportion to the remainder of the fiscal year.
(d) As of July 1, 2019, there is an annual nonrefundable and non-prorated operational fee for all brewers, resident brewers, Class A retail dealers, Class B retail dealers, and distributors of $100 which shall be paid on or before July 1, 2019 and every July 1 thereafter. All fees collected by the commissioner pursuant to this subsection shall be deposited in a special revenue account in the State Treasury, hereby created, to be known as the Beer License Operations Fund. Moneys in the fund may only be expended by the commissioner for the administration of this article, and as appropriated by law.

(e) All representatives engaged in the selling, marketing, merchandising, or the conducting of any other sales on behalf of any brewer, resident brewer or distributor of nonintoxicating beer shall be issued a license by the commissioner. A licensee is subject to the provisions of §11-16-23 of this code for violations of this article and the rules promulgated thereunder. It is a violation of the code and rules to operate without such license and is punishable by the penalties available under this article. The commissioner shall prescribe forms to complete such licensure.

(f) Any brewer, resident brewer, distributor or any person transporting nonintoxicating beer or nonintoxicating craft beer for resale, and not for personal use, in or through this state on behalf of such licensees or persons, or by contract or other means, who is operating in this state may only transport nonintoxicating beer or nonintoxicating craft beer available for resale, and not personal use, in or through this state. All vehicles transporting nonintoxicating beer or nonintoxicating craft beer shall be issued a nonintoxicating beer transportation permit. Transporting nonintoxicating beer or nonintoxicating craft beer for resale, and not for personal use, in or through this state without a nonintoxicating beer transportation permit is in violation of law and the penalties prescribed under §11-16-18 and §11-16-23 of this code are applicable for any violation. The commissioner shall prescribe forms to complete such permitting.

(g) Any brewer or resident brewer offering nonintoxicating beer or nonintoxicating craft beer for sale under this article shall register, prior to offering such beer for sale in the state, with the commissioner each nonintoxicating beer or nonintoxicating craft beer container label. No
nonintoxicating beer or nonintoxicating craft beer brand may be sold under this article unless all
of such nonintoxicating beer or nonintoxicating craft beer brand's container labels for the product
intended for sale in the state have been registered and reviewed by the commissioner. Prior to
registration of any nonintoxicating beer or nonintoxicating craft beer container labels, this review
shall include, but not be limited to, a review of the alcohol content, corporate or product
information, marketing and advertising so that the nonintoxicating beer or nonintoxicating craft
beer container label is not intended to be marketed to persons less than 21 years of age. The
commissioner shall remove all nonrenewed nonintoxicating beer or nonintoxicating craft beer
container labels, and any licensee who sells nonintoxicating beer or nonintoxicating craft beer
with nonrenewed container labels shall be subject to the penalties under §11-16-23 of this code.
Failure to register, obtain a review, and a certification for a nonintoxicating beer or nonintoxicating
craft beer container label and failure to register such labels will subject the brewer or resident
brewer to penalties under said section. The commissioner shall prescribe forms to complete such
registration.

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

(i) If at any time a foreign corporation is no longer qualified to transact business in this
state, the Secretary of State shall notify the commissioner of such fact and the commissioner shall
thereupon suspend the brewer’s license issued to such foreign corporation until such time as such
foreign corporation has again qualified to transact business in this state and has otherwise
complied with the provisions of this section.

(j) Notwithstanding any other provision of this article to the contrary, any corporation
issued a brewer's license under the provisions of this article shall not engage in the business of
a distributor or retailer as defined in this article.
§11-16-11b. Special license for one-day charitable events; application; license subject to provisions of article; exception.

1. (1) The commissioner may issue a special one-day license to be designated a Class S1 license for the retail sale of nonintoxicating beer and nonintoxicating craft beer to a duly-organized nonprofit corporation, limited liability entity, or an association having received federal tax exempt status allowing the sale and serving of nonintoxicating beer or nonintoxicating craft beer when raising money for artistic, athletic, charitable, educational, or religious purposes. The commissioner may not charge a fee to the applicant that meets requirements for licensure. The special license shall be issued for a term no longer than one day. No more than six licenses may be issued to any single licensee during any calendar year. The license application shall contain a copy of the documents showing approved federal tax-exempt status and other information required by the commissioner and shall be submitted to the commissioner at least 15 days prior to the event. Nonintoxicating beer served and sold during the event shall be purchased from a licensed distributor or resident brewer, acting in the limited capacity of a distributor for its own products, that services the location where the festival, fair, or other event is occurring. All distributors and resident brewers in the area must be notified in writing by mail, facsimile or electronic mail of the event in advance and be presented with the opportunity to participate in the event. Licensed representatives of distributors, brewers, or resident brewers may attend the one-day event and discuss their products, but may not engage in the serving or selling of the nonintoxicating beer or nonintoxicating craft beer. A licensee licensed by this section may use bona fide employees or volunteers of the charitable entity to sell and serve nonintoxicating beer and nonintoxicating craft beer.

2. (2) A license issued under the provisions of this section and the licensee holding the license are subject to all other provisions of this article and the rules and orders of the commissioner relating to the special license: Provided, That the commissioner may by rule or order allow certain waivers or exceptions with respect to those provisions, rules, or orders as the
circumstances of each event requires, including, without limitation, the right to revoke or suspend
any license issued pursuant to this section prior to any notice or hearing notwithstanding the
provisions of §11-16-24 of this code: Provided, however, That under no circumstances may the
provisions §11-16-18(a)(1), §11-16-18(a)(2), or §11-16-18(a)(3) of this code, be waived or an
exception granted with respect to those provisions.

§11-16-12. When bond not required; bond of a Class A retail dealer; action on bond of retail
dealer upon revocation of license; duty of prosecuting attorney.

(a) There shall be no bond for a brewer, resident brewer, distributor, Class S brewpub
license, as the license privilege itself secures the payment of taxes and is subject to suspension
and revocation for failure to pay said taxes.

(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 $500 nor more than $1,000 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
or her 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.

§11-16-17a. Commissioner to investigate, review, and approve or deny franchise
agreements, labels, brands, and line extensions.

(a) The commissioner shall investigate and review:

(1) All franchise agreements and any amendments to a franchise agreement to verify
compliance with this article and the promulgated rules.

(2) The registration of all container labels for brands manufactured, imported or sold in
West Virginia, as further specified in §11-16-10(g) of this code.

(3) The registration of all brands and line extensions with the commissioner that are the
subject of a franchise agreement or an amendment to a franchise agreement.

(4) The appointment of all brands or line extensions to a distributor in a brewer’s
established franchise distributor network and to that distributor’s assigned territory from the
brewer.

(5) The appointment of all brands or line extensions acquired by a brewer as either an
acquiring brewer, successor brewer and also any successor entities of a brewer, as specified in
§11-16-21(a)(3) of this code, to the distributor in the selling brewer’s established franchise
distributor network and to that distributor’s assigned territory.

(b) The commissioner’s investigation and review under subsection (a) of this section may
include, but is not limited to: the brewer, its subsidiaries, parent entities, contracted entities,
affiliated entities, associated entities or any other related entities, the brewer’s corporate structure,
the nature of the relatedness of various entities, ownership, trade names or partial trade names,
logos, copyrights, trademarks or trade design, product codes, marketing and advertising,
promotion or pricing.
(c) The commissioner may approve or deny any item listed in subsection (a) of this section
as determined by the commissioner in accordance with this article, the promulgated rules as the
facts and circumstances dictate.

(d) Any brewer adversely affected by a denial as specified in subdivision (3) or (4),
subsection (a) of this section, may request, in writing, a final written determination from the
commissioner.

(e) Upon receipt of final determination as provided in subsection (d) of this section, a
brewer may request an administrative hearing by filing a written petition and as otherwise required
per §11-16-24 of this code and the rules promulgated by the commissioner. Upon filing a written
petition, the brewer shall file a $1,000 hearing deposit, via certified check or money order, to cover
the costs of the hearing. Such certified check or money order shall be made payable to the
commissioner. In any such hearing held by the request of a brewer, the burden of proof is on the
brewer and the standard of review for the administrative hearing is by a preponderance of the
evidence.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman, Senate Committee
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

[Signatures]

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 ______ day of ________ 2019.

[Signature]
Governor

Day of __ 2019

Filed 5-10-19
PRESENTED TO THE GOVERNOR

[2019]

Time 11:16am