

## **CHAPTER 11. TAXATION.**

### **ARTICLE 16. NONINTOXICATING BEER.**

#### **§11-16-1. Short title.**

This article shall be known and may be cited as "The Nonintoxicating Beer Act."

#### **§11-16-2. Declaration of legislative findings, policy and intent; construction.**

It is hereby found by the Legislature and declared to be the policy of this state that it is in the public interest to regulate and control the manufacture, sale, distribution, transportation, storage and consumption of the beverages regulated by this article within this state and that, therefore, the provisions of this article are a necessary, proper and valid exercise of the police powers of this state and are intended for the protection of the public safety, welfare, health, peace and morals and are further intended to eliminate, or to minimize to the extent practicable, the evils attendant to the unregulated, unlicensed and unlawful manufacture, sale, distribution, transportation, storage and consumption of such beverages and are further intended to promote temperance in the use and consumption thereof. In order to further these ends, the provisions of this article and of the rules and regulations promulgated pursuant thereto, shall be construed so that the accomplishment of these stated purposes may be effectuated.

#### **§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 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 regulations and guidelines, a portion of which premises are designated for retail sales.
- (3) "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner.
- (4) "Distributor" means and includes any person jobbing or distributing nonintoxicating beer to retailers at wholesale and whose warehouse and chief place of business shall be within this state.
- (5) "Nonintoxicating beer" means all cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers 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, all of which are hereby declared to be nonintoxicating and the word "liquor" as used in chapter sixty of this code shall not be construed to include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.

(6) "Nonintoxicating craft beer" means any beverage obtained by the 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.

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

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

(9) "Resident brewer" means any person, firm, association, partnership, or corporation whose principal place of business is within the state.

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

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

**§11-16-4. Responsibility of alcohol beverage control commissioner; administrators, employees and agents; administration and enforcement expenses.**

(a) The alcohol beverage control commissioner described under the provisions of article two, chapter sixty of this code shall have sole responsibility for the administration of this article, except for those responsibilities expressly vested in the tax commissioner under sections thirteen, fourteen and fifteen of this article.

All acts heretofore performed by the nonintoxicating beer commissioner under previous proceedings of this article are hereby again ratified and confirmed, and the commissioner shall succeed to the same position previously maintained by the nonintoxicating beer commissioner in all proceedings and official acts instituted and perfected under the provisions of this article prior to the effective date of this section.

(b) The commissioner shall appoint an adequate number of competent persons to serve as administrators, employees and agents of the commissioner for the purpose of keeping all necessary accounts and records required under the provisions of this article; investigating the books, accounts, records and other papers of retailers, distributors and brewers; investigating applicants for license and the places of business of retailers, distributors and brewers; procuring evidence with respect to violations of the provisions of this article, and particularly for use at hearings held by the commissioner and on proceedings instituted in court for the purpose of revoking or suspending licenses hereunder; and such administrators, employees and agents shall perform such other duties as the commissioner may direct. Such administrators, employees and agents shall have the right to enter any licensed premises in the state in the performance of their duties at any hour of the day or night when beer is being sold or consumed on such licensed premises. Refusal by any licensee or by any employee of a licensee to permit such administrators, employees or agents to enter

the licensed premises shall be an additional cause for revocation or suspension of the license of such licensee by the commissioner. The compensation of such administrators, employees and agents shall be fixed by the commissioner: *Provided*, That the commissioner may employ up to eleven special investigators who shall be nonclassified exempt employees of the division.

(c) Services rendered the state by clerks, sheriffs, commissioners in chancery and special commissioners, designated by the court, and court reporters and stenographers performing services for said commissioner and fees of witnesses summoned on behalf of the state in proceedings to revoke or suspend retailer's licenses shall be treated as part of the expenses of administration and enforcement, and such officers and said other persons shall be paid the same fees and charges as would be chargeable for like services performed for an individual; and the compensation of such clerks, sheriffs and other persons shall be paid out of the amount allocated for the expense of administration enforcement, after the amount of such fees and other charges shall be certified by the court to the auditor.

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

No person shall manufacture, 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. Nothing contained in this article shall prohibit any brewer located within the state from manufacturing or transporting for sale without the state beer of an alcoholic strength greater than that of nonintoxicating beer.

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

(a) No person shall be licensed in more than one capacity under the terms of this article, and there shall be no connection whatsoever between any retailer or distributor or brewer, and no person shall be interested directly or indirectly through the ownership of corporate stock, membership in a partnership, or in any other way in the business of a retailer, if such person is at the same time interested in the business of a brewer or distributor. A brewer whose place of brewing or manufacture is located within the state of West Virginia may act as distributor of his own product from such brewery, place of manufacture or bottling, but must have a distributor's license for distribution from a place other than the place of brewing or manufacture. A resident brewer or distributor may sell to a consumer for personal use and not for resale, draught beer in quantities of one-eighth, one-fourth and one-half barrels in the original containers.

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

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

**§11-16-6a.**

Repealed.

Acts, 1966 Reg. Sess., Ch. 55.

**§11-16-7. License not transferable; change of location.**

No license issued under the provisions of this article shall be transferred to another person, nor shall the location of the premises to which the license relates be changed without the written consent of the commissioner, which consent may be given or refused, in his or her discretion.

**§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 therefor, accompanied by a license fee, and, where required, a bond, stating 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 next 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 or corporation, the application shall include the residence of the members or officers for a period of two years next preceding the date of such application: **Provided**, That if any person, firm, partnership, limited partnership, association or corporation applies for a license as a distributor, such person, or in the case of a firm, partnership, limited partnership or association, the members or officers thereof shall state under oath that each has been a bona fide resident of the state for four years preceding the date of such application;

(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; and, if a corporation organized or authorized to do business under the laws of the state, when and where incorporated, with the name and address of each officer; that each officer is a citizen of the United States and a person of good moral character; and if a firm, association, partnership or limited partnership, the place of birth of each member of the firm, association, partnership or limited partnership, and that each member 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: **Provided**, That the requirements as to residence shall not apply to the officers of a corporation which shall apply for a retailer's license, but the officers, agent, or employee who shall manage and be 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 such 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 laws of health, fire and zoning regulations applicable thereto, and is a safe and proper place or building, and is not within three hundred feet of any school or church, measured from front door to front door, along the street or streets:

**Provided**, That this requirement shall not apply to a Class B license, or to any place now occupied by a beer licensee, so long as it is continuously so occupied: **Provided, however**, That the prohibition against locating any such proposed business in a place or building within three hundred feet of any school shall not apply to any college or university that has notified the commissioner, in writing, that it has no objection to the location of any such proposed business in a place or building within three hundred feet of such college or university;

(6) That the applicant is not incarcerated and has not during the five years immediately 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 shall be in any manner pecuniarily interested therein during the continuance of the license; and

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

(b) The provisions and requirements of subsection (a) of this section are mandatory prerequisites for the issuance, and in the event any applicant fails to qualify under the same, 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 deemed necessary or advisable; and for this reason each and all applications, with license fee and bond, must be filed thirty days prior to the beginning of any fiscal year, and if application is for an unexpired portion of any fiscal year, issuance of license may be withheld for such reasonable time as necessary for investigation.

(c) The commissioner may refuse a license to any applicant under the provisions of this article if the commissioner shall be 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: **Provided**, That this requirement shall not apply to a Class B licensee, or to any place now occupied by a beer licensee, so long as it is continuously so occupied: **Provided, however**, That the prohibition against locating any such place to be occupied by an applicant within three hundred feet of any school shall not apply to any 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 of such college or university; or

(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.**

There is hereby levied and imposed an annual license tax upon all dealers in and of nonintoxicating beer as defined by this article, which license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following year, and, if granted for a less period, the same shall be computed semiannually in proportion to the remainder of the fiscal year as follows:

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

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

In the case of a Class B retailer, the fee for a Class B license authorizing the sale of both chilled and unchilled beer shall be one hundred fifty dollars for each place of business. A Class B license shall authorize the licensee to sell nonintoxicating beer at retail in bottles, cans or other sealed containers only, and only for consumption off the licensed premises. Sales under this license to any person at any one time must be in less quantities than five gallons: *Provided*, That a Class B retailer may sell to a consumer, for personal use and not for resale, draught beer in quantities of one-eighth, one-fourth and one-half barrels in the original containers. Such license may be issued only to the proprietor or owner of a grocery store. For the purpose of this article the term "grocery store" means and includes any retail establishment commonly known as a grocery store or delicatessen and caterer or party supply store, where food or food products are sold for consumption off the premises, and shall include and mean a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products and supplies for the table for consumption off the premises. The commissioner may promulgate legislative rules pursuant to chapter twenty-nine-a of this code necessary to carry this provision into effect. Caterers or party supply stores will be required to purchase the appropriate licenses from the alcohol beverage control administration.

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

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

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

**§11-16-10. Brewer's license for foreign corporation; application; bond; contents of application; limitations; annual license fee; renewal; suspension; license fee for sales representatives.**

(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, the bond required by section nine of this article, 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 one thousand five hundred dollars per annum. The license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following year, and if granted for a lesser period, the same shall be prorated semiannually in proportion to the remainder of the fiscal year.

(d) All sales representatives for any brewer or manufacturer of nonintoxicating beer shall be issued a permit by the commissioner. The permit fee for each sales representative of or employed by a licensed brewer or manufacturer shall be fifty dollars.

(e) 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.

(f) If at any time such 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.

(g) 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.

**§11-16-11. Special license for festivals and fairs; license fee and application; license subject to provisions of article; exceptions.**

The commissioner may issue a special license to be designated a Class S license for the retail sale of nonintoxicating beer at a festival or fair, provided the festival or fair is sponsored or endorsed by the governing body of either the municipality or of the county wherein the festival or fair is to be conducted. Such special license shall be issued for a term of no longer than ten consecutive days and the fee therefor shall be two hundred fifty dollars regardless of the term of the license. The application for such license shall contain such information as the commissioner may require and shall be submitted to the commissioner at least thirty days prior to the first day upon which nonintoxicating beer is to be sold at such festival or fair.

A license issued under the provisions of this section and the licensee holding such license shall be subject to all other provisions of this article and the rules, regulations, and orders of the commissioner relating to such special license: **Provided**, That the commissioner may by rule, regulation, or order provide for certain waivers or exceptions with respect to such provisions, rules, regulations, or order as the circumstances of each such festival or fair may require, 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 section twenty-four of this article: **Provided, however**, That under no circumstances shall the provisions of subdivisions (1), (2) or (3), subsection (a), section eighteen of this article, be waived nor shall any exception be granted with respect thereto.

**§11-16-12. Bond of brewer, distributor, brewpub and Class A retail dealer; action on bond of retail dealer upon revocation of license; duty of prosecuting attorney.**

(a) In addition to furnishing the information required by this article, each brewer or distributor applying for a license under this article shall furnish, as prerequisite to a license, a bond with some solvent surety company as surety, to be approved by the commissioner, payable to the state of West Virginia, conditioned for the payment of any and all additional taxes accruing during the period of such license, and conditioned further for the faithful observance of the provisions of this article, the rules, regulations and orders promulgated pursuant thereto and of any other laws of the state of West Virginia generally relating to the sale, transportation, storage and distribution of nonintoxicating beer, which said bonds shall be forfeited to the state upon the revocation of the license of any such brewer or distributor. The amount of such bond, in the case of a resident brewer or brewpub, shall be not less than five thousand dollars, nor more than ten thousand dollars, and in the case of a distributor, not less than two thousand dollars, nor more than five thousand dollars for each place of business licensed and conducted within the state, the amount of such bond, between the minimum and maximum amounts, to be determined in the discretion of the commissioner. In the case of brewers shipping nonintoxicating beer into the state, any brewer must also furnish a bond in a penalty of not less than five thousand dollars nor more than twenty-five thousand dollars conditioned as hereinabove in this subsection provided and any bond furnished pursuant hereto shall be

forfeited to the state in the full amount of said bond upon revocation of license of any such brewer or distributor. Such money received by the state shall be credited to the state fund, general revenue.

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

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

#### **§11-16-13. Barrel tax on nonintoxicating beer.**

(a) There is hereby levied and imposed, in addition to the license taxes provided for in this article, a tax of five dollars and fifty cents on each barrel of thirty-one gallons and in like ratio on each part barrel of nonintoxicating beer manufactured in this state for sale within this state, whether contained or sold in barrels, bottles or other containers, and a like tax is hereby levied and imposed upon all nonintoxicating beer manufactured outside of this state and brought into this state for sale within this state; but no nonintoxicating beer manufactured, sold or distributed in this state is subject to more than one barrel tax. The brewer manufacturing or producing nonintoxicating beer within this state for sale within this state shall pay the barrel tax on such nonintoxicating beer, and, except as provided otherwise, the distributor who is the original consignee of nonintoxicating beer manufactured or produced outside of this state, or who brings such nonintoxicating beer into this state, shall pay the barrel tax on such nonintoxicating beer manufactured or produced outside of this state: *Provided*, That the barrel tax imposed by this section shall not apply to nonintoxicating beer manufactured by a brewpub.

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

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

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

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

(e) Brewers and distributors and operators of brewpubs shall keep all records which relate to the sale or purchase in this state of nonintoxicating beer for a period of three years unless written approval for earlier disposal is granted by the tax commissioner.

(f) Brewpubs shall keep such records as required by the federal government and may, in lieu of the recordkeeping and reporting requirements contained in subsections (a) through (e) of this section, file copies of the federal reports contemporaneously with the tax commissioner at the time of such filings with the federal government. The filing of duplicate copies of the federal reports with the state tax commissioner shall be deemed as compliance with subsections (a) through (e) of this section.

#### **§11-16-14. Collection of unpaid license tax.**

If any person whose report to the tax commissioner as provided for in section thirteen of this article shows him to be liable for any unpaid taxes, and who shall fail to pay the same as provided herein, the tax commissioner shall be authorized to institute collection remedies provided for in article ten of this chapter. In addition, the alcohol beverage control commissioner may revoke the license of any such person failing to pay any such tax.

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

Every brewer, manufacturer or distributor or operator of a brewpub shall maintain, keep and preserve for a period of three years such record or records of nonintoxicating beer manufactured, sold or distributed in this state, including, but not limited to, coolers, together with such invoices, records, receipts, bills of lading and other pertinent papers as may be required by the tax commissioner, and the tax commissioner shall have authority to inspect, by himself or through the commissioner's duly designated agent, the books, accounts, records and memoranda of any person licensed under the provisions of this article, and to examine, under oath, any officer, agent or employee of any brewer, manufacturer or distributor or operator of a brewpub. The tax commissioner may require the production, within this state at such time and place as the commissioner may designate, of any books, accounts, papers or records kept within or without the state, or verified copies in lieu thereof, in order that an examination thereof may be made by the tax commissioner or the commissioner's duly designated agents. If, as the result of such examination, it shall be found that any nonintoxicating beer, subject to the payment of a tax, has been manufactured, brewed, sold or distributed by any person, upon which the tax has not been paid, the tax commissioner shall make an assessment of the amount of tax so found to be due, and, in addition thereto and as a part thereof, shall assess a penalty of fifty percent of the amount of such tax and shall notify such person of the total amount due. If the same remains unpaid for a period of thirty days, the tax commissioner shall have the authority to collect the amount found to be due by an appropriate legal proceeding in any of the circuit courts in which an action for the collection of unpaid taxes may be maintained under section fourteen of this article, unless an appeal is taken from the action of the tax commissioner as hereinafter provided. The tax commissioner shall notify the alcohol beverage control commissioner of any such unpaid assessment.

Within ten days after receipt of notice of any additional amount claimed to be due from any person as shown by an examination by the tax commissioner, such person, if he or she deems themselves aggrieved thereby, shall so notify the tax commissioner and shall request a hearing thereon and the tax commissioner shall set a hearing into the matters raised by such notice, which hearing shall be held as a contested case pursuant to article ten of this chapter, except that the licensee shall have the right of appeal from the tax commissioner's findings only to the circuit court of Kanawha County, West Virginia. Whether the finding of the tax commissioner is affirmed or reversed, such circuit court shall enter an order accordingly and either party shall then have the right of appeal to the supreme court of appeals of the state.

**§11-16-15b.**

Repealed.

Acts, 1981 Reg. Sess., Ch. 41.

**§11-16-16. Restrictions on nonresident brewers, manufacturers and distributors.**

No brewer or manufacturer whose chief place of business is outside the state of West Virginia shall offer for sale or sell nonintoxicating beer, in the state of West Virginia, or offer any of the same for shipment into this state, except to a distributor who is duly licensed under this article, and no such brewer or manufacturer shall consign, ship or deliver any of the same to any person within the state of West Virginia, or sell and deliver the same outside the state of West Virginia to be transported into the state of West Virginia, except to

a duly licensed distributor for delivery at the place of business of such distributor as set forth in such brewer's or manufacturer's license. No such brewer or manufacturer shall have any interest in the business of any distributor or retailer, nor be connected directly or indirectly with any distributor or retailer. Every such brewer or manufacturer shall mail to the commissioner on or before the tenth day of each calendar month, a sworn statement showing all such sales and shipments of nonintoxicating beer made by such brewer or manufacturer during the preceding calendar month. If any such brewer or manufacturer shall violate any of the provisions of this article or shall violate any of the rules, regulations, or order of the commissioner, such brewer or manufacturer shall be punished in like manner as provided for any nonresident brewer who shall violate any provisions of this section. If any such brewer shall violate any of the provisions of this article, he shall not be permitted to sell, ship or deliver any nonintoxicating beer to any distributor or to otherwise engage in any business authorized by this article for a period of not to exceed one year from the date the notice shall be mailed to such brewer or manufacturer by the commissioner of the fact that such brewer or manufacturer has violated the provisions of this article or such rules, regulations, or orders of the commissioner. During such period of one year it shall be unlawful for any distributor or manufacturer or for any other person within the jurisdiction of the state of West Virginia, to buy or receive from such brewer or manufacturer any nonintoxicating beer or have any dealings with such brewer or manufacturer with respect thereto. A distributor, who has not qualified with residence requirements of this article or whose chief place of business is outside the state of West Virginia shall not sell, ship, transport, convey or deliver, or cause to be sold, shipped, transported, conveyed or delivered, directly or indirectly, any nonintoxicating beer to any distributor within the state of West Virginia. If any such distributor shall violate any of the provisions of this article, he shall be punished in like manner as provided for any nonresident brewer or manufacturer who shall violate any provisions of this section.

**§11-16-17. Container labeling.**

It shall be unlawful for any brewer, brewpub, manufacturer, distributor or retailer to have affixed upon any beer, ale or other malt beverage or malt cooler container, sold or for sale in this state, a label bearing any design, picture or wording, indicating that the contents of the container are brewed or manufactured for one particular distributor or retailer or group of retailers, or use any trademark other than that of a licensed brewer or manufacturer.

**§11-16-18. Unlawful acts of licensees; criminal penalties.**

(a) It shall be unlawful:

(1) For any licensee, his, her, its or their servants, agents or employees to sell, give or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected therewith, nonintoxicating beer or cooler on weekdays between the hours of two o'clock a.m. and seven o'clock a.m., or between the hours of two o'clock a.m. and one o'clock p.m., on any Sunday, except in private clubs licensed under the provisions of article seven, chapter sixty of this code, where the hours shall conform with the hours of sale of alcoholic liquors;

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

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

(4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for the containers when title is retained by the vendor: *Provided*, That a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor must initiate the transfer no later than noon of one business day after the delivery;

(5) For any brewer or distributor or brewpub or his, her, its or their agents to transport or deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;

(6) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein contained shall prohibit a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any events: *Provided, however*, That no event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the commissioner;

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

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

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

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

(11) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased or acquired from any source other than a distributor, brewer or manufacturer licensed under the laws of this state;

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

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

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

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

(16) For any Class B retailer to permit the consumption of nonintoxicating beer upon his or her licensed premises;

(17) For any Class A licensee, his, her, its or their servants, agents or employees, or for any licensee by or through any servants, agents or employees, to allow, suffer or permit any person less than eighteen years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision do not apply where a person under the age of eighteen years is in or upon the premises in the immediate company of his or her parent or parents, or where and while a person under the age of eighteen years is in or upon the premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on the premises;

(18) For any distributor to sell, offer for sale, distribute or deliver any nonintoxicating beer outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating beer or to sell, offer for sale, distribute or deliver nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of such nonintoxicating beer: *Provided*, That nothing herein is considered to prohibit sales of convenience between distributors licensed in this state wherein one distributor sells, transfers or delivers to another distributor a particular brand or brands for sale at wholesale; and

(19) For any licensee or any agent, servant or employee of any licensee to knowingly violate any rule lawfully promulgated by the commissioner in accordance with the provisions of chapter twenty-nine-a of this code.

(b) Any person who violates any provision of this article including, but not limited to, any provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful is guilty of a misdemeanor and, upon conviction thereof, shall be punished for each offense by a fine of not less than twenty-five nor more than five hundred dollars, or confined in the county or regional jail for not less than thirty days nor more than six months, or by both fine and confinement. Magistrates shall have concurrent jurisdiction with the circuit court and any other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising under this article.

(c) (1) A Class B licensee that:

(A) Has installed a transaction scan device on its licensed premises; and

(B) Can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is sold, furnished or given away by the use of the transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner; or (iii) any civil liability whatsoever for the improper sale, furnishing or giving away of nonintoxicating beer to an individual who is less than twenty-one years of age by one of his or her employees, servants or agents. Any agent, servant or employee who has improperly sold, furnished or given away nonintoxicating beer to an individual less than twenty-one years of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant or employee who has improperly sold, furnished or given away nonintoxicating beer to an individual less than twenty-one years of age is subject to termination from employment, and the employer shall have no civil liability for the termination.

(2) For purposes of this section, a Class B licensee can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is sold by providing evidence: (A) That it has developed a written policy which requires each employee, servant or agent to verify the age of each individual to whom nonintoxicating beer will be sold, furnished or given away; (B) that it has communicated this policy to each employee, servant or agent; and (C) that it monitors the actions of its

employees, servants or agents regarding the sale, furnishing or giving away of nonintoxicating beer and that it has taken corrective action for any discovered noncompliance with this policy.

(3) "Transaction scan" means the process by which a person checks, by means of a transaction scan device, the age and identity of the cardholder, and "transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver's license or other governmental identity card.

(d) Nothing in this article nor any rule or regulation of the commissioner shall prevent or be considered to prohibit any licensee from employing any person who is at least eighteen years of age to serve in the licensee's lawful employ, including the sale or delivery of nonintoxicating beer as defined in this article. With the prior approval of the commissioner, a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age: *Provided*, That the person's duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors: *Provided, however*, That the authorization to employ persons under the age of eighteen years shall be clearly indicated on the licensee's license.

#### **§11-16-19. Unlawful acts of persons; criminal penalties.**

(a) (1) Any person under the age of twenty-one years, who purchases, consumes, sells, possesses or serves nonintoxicating beer is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed \$500 or shall be confined in jail, or, in the case of a juvenile, a detention facility, for a period not to exceed seventy-two hours, or both fined and confined or, in lieu of such fine and confinement, may, for the first offense, be placed on probation for a period not to exceed one year. Any person convicted under this section may be sentenced pursuant to the provisions of section one-a, article eleven-a, chapter sixty-two of this code.

(2) Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of nonintoxicating beer as defined in this article. Further, nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast-food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores: *Provided*, That such person shall not sell or deliver nonintoxicating beer.

(3) Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing nonintoxicating beer when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol

Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules of the commissioner.

(b) Any person under the age of twenty-one years who, for the purpose of purchasing nonintoxicating beer, misrepresents his or her age or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own or who illegally attempts to purchase nonintoxicating beer is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed \$100 or shall be confined in jail, or in the case of a juvenile, a juvenile detention facility, for a period not to exceed seventy-two hours, or both such fine and confinement or, in lieu of such fine and confinement, may, for the first offense, be placed on probation for a period not exceeding one year.

(c) Any person who shall knowingly buy for, give to or furnish nonintoxicating beer to anyone under the age of twenty-one to whom they are not related by blood or marriage is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed \$100 or shall be confined in jail for a period not to exceed ten days, or both such fine and confinement.

(d) (1) Any person who at any one time transports into the state for their personal use, and not for resale, more than six and seventy-five hundredths gallons of nonintoxicating beer, upon which the West Virginia barrel tax has not been imposed, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed \$100 or confined for ten days in jail, or both fined and imprisoned. The untaxed nonintoxicating beer found in the person's possession shall be confiscated.

(2) If the Congress of the United States repeals the mandate established by the Surface Transportation Assistance Act of 1982 relating to national uniform drinking age of twenty-one as found in section six of Public Law 98-363, or a court of competent jurisdiction declares the provision to be unconstitutional or otherwise invalid, it is the intent of the Legislature that the provisions contained in this section and section eighteen of this article which prohibit the sale, furnishing, giving, purchase or ownership of nonintoxicating beer to or by a person who is less than twenty-one years of age shall be null and void and the provisions therein shall thereafter remain in effect and apply to the sale, furnishing, giving, purchase or ownership of nonintoxicating beer to or by a person who is less than nineteen years of age.

**§11-16-20. Unlawful acts of brewers or manufacturers; criminal penalties.**

(a) It shall be unlawful:

(1) For any brewer or manufacturer, or any other person, firm or corporation engaging in the business of selling nonintoxicating beer, ale or other malt beverage or cooler to a distributor or wholesaler, to discriminate in price, allowance, rebate, refund, commission, discount or service between distributors or wholesalers licensed in West Virginia. "Discriminate," as used in this section, shall mean granting of more favorable prices, allowances, rebates, refunds, commissions, discounts or services to one West Virginia distributor or wholesaler than to another.

(2) For any brewer or manufacturer, or any other person, firm or corporation engaged in the business of selling nonintoxicating beer, ale or other malt beverage or malt cooler to a distributor or wholesaler, to sell or deliver nonintoxicating beer, ale or other malt beverage or malt cooler to any licensed distributor or wholesaler unless and until such brewer, manufacturer, person, firm or corporation, as the case may be, shall have filed the brewery or dock price of such beer, ale or other malt beverage or malt cooler, by brands and container sizes, with the commissioner. No price schedule shall be put into effect until fourteen days after receipt of same by the commissioner: **Provided**, That any price reductions shall remain in effect not less than thirty days.

(b) The violation of any provision of this section by any brewer or manufacturer shall constitute grounds for the forfeiture of the bond furnished by such brewer or manufacturer in accordance with the provisions of section twelve of this article.

**§11-16-21. Requirements as to franchise agreements between brewers and distributors; transfer of franchise by distributor; notice thereof to brewer; arbitration of disputes as to such transfer; violations and penalties; limitation of section.**

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

(1) The brewer recognizes that the distributor is free to manage his or her business in the manner the distributor deems best and that this prerogative vests in the distributor, subject to the provisions of this article, the exclusive right to establish his or her selling prices, to select the brands of beer he or she wishes to handle and to determine the efforts and resources which the distributor will exert to develop and promote the sale of the brewer's products handled by the distributor. However, since the brewer does not expect that its products handled by the distributor will be sold by others in the territory assigned to the distributor, the brewer is dependent upon the distributor alone for the sale of such products in said territory. Consequently, the brewer expects that the distributor will price competitively the products handled by the distributor, devote reasonable effort and resources to the sale of such products and maintain a satisfactory sales level.

(2) Whenever the manufacturing, bottling or other production rights for the sale of nonintoxicating beer at wholesale of any brewer is acquired by another brewer, the franchised distributor of the selling brewer shall be entitled to continue distributing the selling brewer's beer products as authorized in the distributor's existing franchise agreement and the acquiring brewer shall market all the selling brewer's beer products through said franchised distributor as though the acquiring brewer had made the franchise agreement and the acquiring brewer may terminate said franchise agreement only in accordance with subdivision (2), subsection (b) of this section: *Provided*, That the acquiring brewer may distribute any of its other beer products through its duly authorized franchises in accordance with all other provisions of this section.

(b) It shall also be unlawful:

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

(2) For any brewer or brewpub or distributor, or any officer, agent or representative of any brewer or brewpub or distributor, to cancel, terminate or rescind without due regard for the equities of such brewer or brewpub or distributor and without just cause, any franchise agreement, whether oral or written, and in the case of an oral franchise agreement, whether the same was entered into on or before the eleventh day of June, one thousand nine hundred seventy-one, and in the case of a franchise agreement in writing, whether the same was entered into on, before or subsequent to the first day of July, one thousand nine hundred seventy-one. The cancellation, termination or rescission of any such franchise agreement shall not become effective for at least ninety days after written notice of such cancellation, termination or rescission has been served on the affected party and the Commissioner by certified mail, return receipt requested: *Provided*, That said ninety-day period and said notice of cancellation, termination or rescission shall not apply if such cancellation, termination or rescission is agreed to in writing by both the brewer and the distributor involved; or

(c) In the event a distributor desires to sell or transfer his or her franchise, such distributor shall give to the brewer or brewpub at least sixty days' notice in writing of such impending sale or transfer and the identity of the person, firm or corporation to whom such sale or transfer is to be made and such other information as the brewer may reasonably request. Such notice shall be made upon forms and contain such additional information as the Commissioner by rule or regulation shall prescribe. A copy of such notice shall be forwarded to the Commissioner. The brewer or brewpub shall be given sixty days to approve or disapprove of such sale or transfer. If the brewer or brewpub neither approves nor disapproves thereof within sixty days of the date of receipt of such notice, the sale or transfer of such franchise shall be deemed to be approved by such brewer. In the event the brewer or brewpub shall disapprove of the sale or transfer to the prospective franchisee, transferee or purchaser, such brewer or brewpub shall give notice to the distributor of that fact in writing, setting forth the reason or reasons for such disapproval. The approval shall not be unreasonably withheld by the brewer or brewpub. The fact that the prospective franchisee, transferee or purchaser has not had prior experience in the nonintoxicating beer business or beer business shall not be deemed sufficient reason in and of itself for a valid disapproval of the proposed sale or transfer, but may be considered in conjunction with other adverse factors in supporting the position of the brewer or brewpub. Nor may the brewer or brewpub impose requirements upon the prospective franchisee, transferee or purchaser which are more stringent or restrictive than those currently demanded of or imposed upon the brewer's or brewpub's or other distributors in the State of West Virginia. A copy of such notice of disapproval shall likewise be forwarded to the Commissioner and to the prospective franchisee, transferee or purchaser. In the event the issue be not resolved within twenty days from the date of such disapproval, either the brewer, brewpub, distributor or prospective franchisee, transferee or purchaser shall notify the other parties of his or her demand for arbitration and shall likewise notify the Commissioner thereof. A dispute or disagreement shall thereupon be submitted to arbitration in the county in which the distributor's principal place of business

is located by a board of three arbitrators, which request for arbitration shall name one arbitrator. The party receiving such notice shall within ten days thereafter by notice to the party demanding arbitration name the second arbitrator or, failing to do so, the second arbitrator shall be appointed by the chief judge of the circuit court of the county in which the distributor's principal place of business is located on request of the party requesting arbitration in the first instance. The two arbitrators so appointed shall name the third or, failing to do so within ten days after appointment of the second arbitrator, the third arbitrator may be appointed by said chief judge upon request of either party. The arbitrators so appointed shall promptly hear and determine and the questions submitted pursuant to the procedures established by the American Arbitration Association and shall render their decision with all reasonable speed and dispatch but in no event later than twenty days after the conclusion of evidence. Said decision shall include findings of fact and conclusions of law and shall be based upon the justice and equity of the matter. Each party shall be given notice of such decision. If the decision of the arbitrators be in favor of or in approval of the proposed sale or transfer, the brewer or brewpub shall forthwith agree to the same and shall immediately transfer the franchise to the proposed franchisee, transferee or purchaser unless notice of intent to appeal such decision is given the arbitrators and all other parties within ten days of notification of such decision. If any such party deems himself or herself aggrieved thereby, such party shall have a right to bring an appropriate action in circuit court. Any and all notices given pursuant to this subsection shall be given to all parties by certified or registered mail, return receipt requested.

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

**§11-16-22. Powers of the commissioner; rules, or orders.**

(a) In addition to all other powers conferred upon the commissioner and in order to effectively carry out the provisions, intent and purposes of this article, the commissioner shall have the power and authority to adopt, promulgate, repeal, rescind and amend, in accordance with the provisions of chapter twenty-nine-a of this code, rules, standards, requirements and orders, including, but not limited to, the following:

(1) Prescribing records and accounts, pertaining to the manufacture, distribution and sales of nonintoxicating beer, to be kept by the licensee and the form thereof;

(2) Requiring the reporting of such information by licensees as may be necessary for the effective administration of this article;

(3) Regulating the branding and labeling of packages, bottles or other containers in which nonintoxicating beer may be sold; and, in his discretion, requiring the collection of all taxes provided for under section thirteen of this article;

(4) Prohibiting shipment into the state and sale within the state of low grade or under-standard nonintoxicating beer;

(5) Referring to licenses and the issuance and revocation of the same;

(6) Establishing the suitability of businesses and locations for licensure, and requiring licensees to keep their places of business where nonintoxicating beer is sold at retail, and the equipment used in connection therewith, clean and in a sanitary condition;

(7) The establishment of advertising guidelines, prohibitions and prior permissions generally, including, but not limited to, (i) the use of posters, placards, mirrors, windows, doors or indoor and outdoor signs generally, and print and electronic advertising of retail licensees specifically, (ii) the sponsoring of athletic events or contests by licensees and restrictions relating thereto, (iii) the use of equipment, fixtures or supplies in advertising, (iv) false advertising with respect to any product of or sold by any licensee, including, but not limited to, draft beer and coolers and (v) the extent, if any, to which free goods and other inducements may be utilized by any licensee;

(8) Wholesale prices or price changes, including, but not limited to, the regulation and extent, if any, of any temporary price markoff or markdown, temporary wholesale price change downward or price discount, sometimes referred to as "post downs" or as "posting down" or any other price change, the express purpose of which is to put into effect a temporary price reduction, as well as the duration of time during which such temporary price reduction is to remain in effect;

(9) Restrictions upon West Virginia distributors or other licensees with respect to the purchase of any nonintoxicating beer or malt coolers from manufacturers or brewers whether within or without the state who have failed to qualify for manufacture or shipment of any such product in the state; and

(10) Regulating, restricting or prohibiting a distributor from selling, offering for sale, distributing or delivering nonintoxicating beer to any retailer whose principal place of business, residence or licensed premises is located without or beyond the assigned territory of such distributor of such nonintoxicating beer.

(b) Any rule or order heretofore adopted by the commissioner and currently in effect upon the convening of the regular session of the Legislature held in the year one thousand nine hundred eighty-six shall remain in effect until changed by the commissioner in the manner prescribed by article three, chapter twenty-nine-a of this code, irrespective of whether specific authority for such currently effective rule existed prior to such date.

**§11-16-23. Revocation or suspension of license; monetary penalty; hearing assessment of costs; establishment of enforcement fund.**

(a) Upon a determination by the commissioner that a licensee has: (i) Violated the provisions of section eighteen of this article or of chapter sixty of this code; (ii) acted in such a way as would have precluded initial or renewal licensure; or (iii) violated any rule or order promulgated by the commissioner, the commissioner may:

- (1) Revoke the licensee's license;
- (2) Suspend the licensee's license;
- (3) Place the licensee on probationary status for a period not to exceed twelve months; and
- (4) Impose a monetary penalty not to exceed one thousand dollars for each violation where revocation is not imposed.

(b) Any monetary penalty assessed and collected by the commissioner shall be transmitted to the state treasurer for deposit into the state treasury to the credit of a special revenue fund designated the "Nonintoxicating Beer Enforcement Fund", which is hereby created. All moneys collected, received and deposited in the "Nonintoxicating Beer Enforcement Fund" shall be kept and maintained for expenditures by the commissioner for the purpose of enforcement of the statutes and rules pertaining to nonintoxicating beer and shall not be treated by the state treasurer or state auditor as any part of the general revenue of the state. At the end of each fiscal year all funds in the nonintoxicating beer enforcement fund in excess of twenty thousand dollars shall be transferred to the general revenue fund.

(c) In addition to the grounds for revocation, suspension or other sanction of a license set forth in subsection (a) of this section, conviction of the licensee of any offense constituting a violation of the laws of this state or of the United States relating to nonintoxicating beer or alcoholic liquor shall be mandatory grounds for such sanctioning of a license. Conviction of the licensee of any violation of the laws of this state or of the United States relating to prostitution or the sale, possession or distribution of narcotics or controlled substances shall be mandatory grounds for revocation of the licensee's license for a period of at least one year.

**§11-16-24. Hearing on sanctioning of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee; assessment of costs.**

The commissioner shall not revoke nor suspend any license issued pursuant to this article or impose any civil penalties authorized thereby unless and until a hearing shall be held after at least ten days' notice to the licensee of the time and place of such hearing, which notice shall contain a statement or specification of the charges, grounds or reasons for such proposed contemplated action, and which shall be served upon the licensee as notices under the West Virginia rules of civil procedure or by certified mail, return receipt requested, to the address for which license was issued; at which time and place, so designated in the notice, the licensee shall have the right to appear and produce evidence in his behalf, and to be represented by counsel.

The commissioner shall have authority to summon witnesses in the hearings before him, and fees of witnesses summoned on behalf of the state in proceedings to sanction licenses shall be treated as a part of the expenses of administration and enforcement. Such fees shall be the same as those in similar hearings in the circuit courts of this state. The commissioner may, upon a finding of violation, assess a licensee a sum not to exceed one hundred fifty dollars per violation to reimburse the commissioner for expenditures for

witness fees, court reporter fees and travel costs incurred in holding the hearing. Any moneys so assessed shall be transferred to the nonintoxicating beer fund created by section twenty-three of this article.

If, at the request of the licensee or on his motion, the hearing shall be continued and shall not take place on the day fixed by the commissioner in the notice above provided for, then such licensee's license may be suspended until the hearing and decision of the commissioner, and in the event of revocation or suspension of such license, upon hearing before the commissioner, the licensee shall not be permitted to sell beer pending an appeal as provided by this article. Any person continuing to sell beer after his license has been suspended or revoked, as hereinbefore provided, is guilty of a misdemeanor and shall be punished as provided in section nineteen of this article.

The action of the commissioner in revoking or suspending a license shall be subject to review by the circuit court of Kanawha County, West Virginia, in the manner provided in chapter twenty- nine-a of this code, when such licensee may be aggrieved by such revocation or suspension. Petition for such review must be filed with said circuit court within a period of thirty days from and after the date of revocation or suspension by the commissioner; and any licensee obtaining an order for such review shall be required to pay the costs and fees incident to transcribing, certifying and transmitting the records pertaining to such matter to the circuit court. An application to the supreme court of appeals of West Virginia for a writ of error from any final order of the circuit court in any such matter shall be made within thirty days from and after the entry of such final order.

All such hearings, upon notice to show cause why license should be revoked or suspended, before the commissioner shall be held in the offices of the commissioner in Charleston, Kanawha County, West Virginia, unless otherwise provided in such notice, or agreed upon between the licensee and the commissioner; and when such hearing is held elsewhere than in the commissioner's office, the licensee may be required to make deposits of the estimated costs of such hearing.

Whenever any licensee has been convicted of any offense constituting a violation of the laws of this state or of the United States relating to nonintoxicating beer, or alcoholic liquor, and such conviction has become final, the clerk of the court in which such licensee has been convicted shall forward to the commissioner a certified copy of the order or judgment of conviction if such clerk has knowledge that the person so convicted is a licensee, together with the certification of such clerk that the conviction is final.

In the case of a Class B licensee with multiple licensed locations, the commissioner may, in his or her discretion, revoke, suspend or otherwise sanction, per the provisions of section twenty-three of this article, only the license for the location or locations involved in the unlawful conduct for which licensure is sanctioned, as opposed to all separately licensed locations of such licensee.

**§11-16-25. Reissuance of license after revocation.**

No license shall be issued to any person who has formerly held a license, under the provisions of this article, which has been revoked by the commissioner, within a period of two years from the date of such revocation; nor shall any license be issued hereunder to any person who was an officer or stockholder of a corporation whose license was revoked as aforesaid, nor to any person who was a member of a partnership or

association whose license was revoked as aforesaid, within said period of two years from the date of revocation; nor shall any license be issued to any corporation having a stockholder or director who has had a license revoked as aforesaid, within said period of two years from the date of the revocation of such person's license: **Provided**, That the commissioner may, in his or her discretion, reissue Class B licenses for any of such licensee's locations not involved in the unlawful conduct of which licensure was revoked notwithstanding such two year period.

**§11-16-26. Municipal license tax.**

Any municipal corporation in this state shall have the authority to levy a license tax under the provisions of this article upon any retailer, distributor or brewer or operator of a brewpub of nonintoxicating beer whose place of business is situated within such municipality, but the amount of the license tax levied by such municipal corporation shall in no event exceed the amount fixed herein to be levied by the state. Only one municipal tax is to be so imposed and that only by the municipality in which the place of business, or warehouse, is located. Cities and incorporated towns are hereby empowered to enact ordinances for the enforcement of this article in conformity with the provisions of the same: **Provided**, That in no case shall the rate of such municipal license tax exceed the rate of such tax in effect on the first day of January, one thousand nine hundred eighty-six.

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

**§11-16-27. Revenue collected and paid to state treasurer; expense of administration.**

Taxes imposed and collected under the provisions of this article shall be paid to the state treasurer in the manner provided by law, and the taxes imposed by sections nine and thirteen of this article shall be credited to the state fund, general revenue. The expenses of administration and enforcement shall be paid out of the taxes collected under sections nine and thirteen of this article, but shall not exceed fifteen percent of the amount so collected.

**§11-16-28. Expiration date of existing licenses; when provisions operable.**

(a) A license now in effect authorizing the manufacture, distribution or sale of nonintoxicating beer shall remain in effect until June thirtieth, one thousand nine hundred eighty-six, unless sooner revoked in accordance with the provisions of this article.

(b) The provisions of this article enacted during the regular session of the Legislature held in the year one thousand nine hundred eighty-six shall become operable at 12:01 a.m. on the first day of July of said year: **Provided**, That the commissioner may issue licenses prior to such date and any licensee may do any act necessary in order to prepare for and be able to engage in the retail sale of any product regulated by this article on that date and at that time.

**§11-16-29. Severability.**

The provisions of subdivision (cc), section ten, article two, chapter two of this code shall apply to the

provisions of this article to the same extent as if the same were set forth in extenso herein and to the extent therein provided the provisions of this article are declared to be severable.