

124
Title 176
Legislative Rules

~~WEST VIRGINIA ADMINISTRATIVE REGULATIONS~~
West Virginia Nonintoxicating Beer Commissioner

Chapter 11-16
(Series I)
(1967)
(As Amended)

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Series 176:

Subject: Rules and Regulations pertaining to the West Virginia Nonintoxicating Beer Commissioner

Section 1. General

1.01. Scope- These regulations establish general rules for the West Virginia Nonintoxicating Beer Commissioner. The numbering of some sections has been changed in order to delete a section which was made ineffective by legislation.

1.02. Authority- These regulations are refiled under authority of West Virginia Code 29A-2-5.

1.03. Effective Date- These regulations were promulgated on the 21st day of June, 1967, and become effective on the December 30, 1982

1.04. Filing Date- The basic regulations, the amended regulations, and all new regulations were filed in the office of the Secretary of State on the respective dates of their promulgation. They are hereby refiled on the 30th day of December, 1982.

Section 2. Licenses

2.01. Transfer- (a) Nonintoxicating beer licenses are not transferable from one person to another, however, with the consent of the Commissioner, endorsed on the face thereof, license may be transferred from one location to another. (b) Licenses shall not be transferred from one location to another before said transfer is approved by the Commissioner. (c) Application for a transfer of a license shall be made on the regular license application form. (d) A letter from licensee's surety company accepting liability on the new location must accompany the transfer application. (e) The transfer of a license will not be approved before the letter from the surety company accepting liability on the new location is received by the Commissioner.

2.02. Abandonment, Leasing or Loaning- (a) No licensee shall abandon, loan, rent or lease his license. (b) Upon the sale of an outlet the licensee shall remove his license from the premises and file the same with the Commissioner. (c) Licensees, together with their surety, permitting others to use their licenses, either by expressed permission or by abandonment, will be held strictly liable for any bond forfeiture ordered against said licensees for violations of the Nonintoxicating Beer Act.

2.03. Establishment- In the exercise of the discretion vested in him by law the Commissioner has determined the following businesses and locations are not suitable for the retail sale of beer and a license therefor may be refused.

(a) Establishments in reasonable close proximity to churches, schools, state institutions, privately operated charitable or eleemosynary institutions; Provided however, that a Class A license shall not be issued to a new establishment located within 300 feet of a school or church, measured from front door to front door along the street or highway.

(b) Establishments in predominantly residential districts of any city, town or village.

(c) Filling stations, unless a bona fide restaurant is operated in connection therewith, and the sale, serving and consumption of beer is restricted to the restaurant section of said filling station.

(d) Establishments above the first or ground floor of any building except social and fraternal clubs as defined in Section 4 of the Nonintoxicating Beer Act.

(e) Establishments not completely under the control of the licensee, including all balconies and adjacent connecting rooms.

(f) Establishments not abutting on a sidewalk unless there is room to park patrons' cars off the road right of way.

(g) Premises on which there is an outstanding nonintoxicating beer license.

(h) Premises in which a nonintoxicating beer license has been revoked, or the issuance thereof delayed for the period of 30 days for the first revocation and 60 days for the second revocation.

2.04. Clubs- A club license shall not be issued until a certified copy of its constitution, by-laws and a roster of its members has been filed with the Commissioner, except this regulation shall not apply to clubs or societies affiliated with national, fraternal and charitable organizations and country clubs.

2.05. Posting License- The license granted under the statute and these regulations must be kept posted in a conspicuous place on the premises.

2.06. Posting of Blood-Alcohol Chart- A blood-alcohol chart, as prescribed by the provisions of Chapter 60, Article 6, Section 24, of the West Virginia Code, which chart shall be provided or approved by the Commissioner, shall be posted in every establishment in West Virginia which sells or offers

for sale nonintoxicating beer, either for on-premise or off-premise consumption. The size of the chart shall be no less than 10 inches by 13 inches.

(a) Every Alcohol Beverage Control Commissioner's licensed private club with a nonintoxicating beer license shall post prominently the blood-alcohol chart, which chart shall be so posted as to be readily accessible and easily readable by the members and guests of such licensed private club.

(b) Every retailer licensed to sell nonintoxicating beer pursuant to the provisions of Chapter 11, Article 16, of the West Virginia Code, shall prominently display during the hours for which the retail sale of nonintoxicating beer is permitted, the blood-alcohol chart at or near that portion of the retail establishment devoted to the sale and/or display of any nonintoxicating beer sold by such retailer. In the event any such retailer shall have nonintoxicating beer displayed for sale at more than one location within the licensed premises, or have multiple points of sale, or multiple points of ingress or egress from the licensed premises, then such retailer may be required to display additional blood-alcohol charts at or near the displays, points of sale or store exits.

(c) The licensee shall be responsible for the prudent care of such blood-alcohol chart and for assuring that the chart is displayed in accordance with the provisions of this regulation.

Section 3. Labels, Brewer's Reports, Taxation, Distributor's Reports, Records Management by Brewers and Distributors

3.01. Approval of Commissioner- Subsection (f) of Section 13 of the West Virginia Nonintoxicating Beer Law declares it to be unlawful for certain designated words or statements to appear upon beer and ale bottle and can labels. To carry out the provisions of this section, brewers must submit beer and ale bottle and can labels to the Commissioner for approval. Labels should be submitted in duplicate. There shall not be any statement as to alcoholic content on the bottle and can label from and after July 1, 1950.

3.02. Serving Bottled Beer From Which Labels Have Been Removed- No retailer of beer shall serve to any customer any bottle of beer from which the label has been removed unless such retailer exhibits such bottle to the customer prior to the opening thereof with crown intact.

3.03. Brewer's Reports, Taxation- On or before the tenth day of each month, holders of West Virginia Brewer's Permits shall file a report, on forms prescribed and provided by the Commissioner, stating the total estimated sales of nonintoxicating beer which it will make to its West Virginia Nonintoxicating Beer Distributors during the reporting month. The beer excise (barrel) tax will be computed on the basis of the monthly estimated sales, and a remittance therefor shall accompany the monthly report.

Brewers will pay, with their consent, the beer excise (barrel) tax on behalf of their West Virginia Nonintoxicating Beer Distributors.

Adjusted monthly reports may be filed as desired by the Brewer.

Any monthly report reflecting an underestimate of the previous month's tax in an amount of twenty-five per cent or more, which has not been timely adjusted, will result in a penalty assessment of one per cent of the total taxes due in such prior month.

3.04. Distributor's Reports- Every licensed distributor shall file a monthly report, on such forms as the Commissioner shall prescribe and provide, setting forth nonintoxicating beer sales and purchases, beginning and ending inventories for such month, and such other information as the Commissioner may require to describe the complete transactions and each distributor shall file such report on or before the fifteenth day of each month.

3.05. Records Management By Brewers and Distributors- Brewers and distributors shall keep all records, which relate to purchase and sales transactions in and for West Virginia, on file in their respective licensed place of business for a period of three years unless approval for earlier disposal is granted in writing by the Commissioner. Such records shall include copies of all invoices covering all purchases, sales invoices, transfers, reports, and such other records to describe the complete nonintoxicating beer transactions of such brewers and distributors and such other records as may be determined by the Commissioner to be essential for audit and control purposes.

Section 4. Advertising

4.01. Any West Virginia Nonintoxicating Beer retail licensee may advertise beverages of the brewing industry only in the following manner:

(a) By a display or displays of beverages and their containers within licensed establishments.

(b) By signs, posters, placards, graphic displays, decorations or other similar advertising matter where the combined area for any one brand of beer does not exceed the maximum of 1,200 square inches, including crepe paper or other background or decorative material, and also does not exceed four signs, placards, posters, or other similar advertising matter.

(c) Such advertising matter as in the aforementioned Subsection (b) may be furnished to a retailer by a brewer or distributor only if they have no value to the retailer except as advertisement.

No brewer or distributor shall directly or indirectly pay or credit the retailer for displaying such advertisement as aforementioned or for any expense incidental thereto.

Nothing in this Regulation shall be construed to permit the display of beer or advertisement in show windows or to prohibit the display of faucet advertising indicating the brand or brands of draft beer offered for sale, as required by Subsection 4.06.

No brewer or distributor shall paint the interior of retail licensed premises under the guise of advertising.

Any advertisement of beer may not contain the following:

- (a) Any statement that is disparaging of a competitor's product.
- (b) Any statement, device or representative that is obscene or indecent.
- (c) Any statement that is false or misleading in any manner.
- (d) Any statement concerning the brand of beer that is inconsistent with any statement on the labeling thereof.

(e) Any statement that may intimate or state that drinking of the advertised product produces good health, affects weight, or like statements.

All signs on the outside of a retailer's establishment indicating the price of beer sold within are hereby prohibited.

Advertising gifts of nominal value may be given if prior written approval of the West Virginia Nonintoxicating Beer Commissioner has been obtained.

For the purpose of this Regulation the brewers and distributors furnishing the aforementioned advertisements and the retailer in whose establishment or grounds same are located shall be held equally responsible for the displaying of such advertising as is herein prohibited.

4.02. Posters, Placards, Mirrors, Windows, Doors- All signs advertising beer, ale or other malt beverages on the windows or doors of retail outlets are prohibited; window displays are not authorized, as same violate provisions of subsection (i) of Section 13 of the West Virginia Nonintoxicating Beer Law.

4.03. Signs- All exterior and interior signs of electrical or mechanical construction, advertising a specific brand of beer, ale, or other malt beverage on the premises of a retail licensee, are prohibited.

All exterior signs, advertising a specific brand of beer, ale or other malt beverage on the premises of a retail licensee, are prohibited.

Premises, as used herein, shall be construed to be the licensed premises, as defined in the application for the license, and any building or lot of ground of which the licensed premises are a part.

4.04. Equipment, Fixtures or Supplies- Brewers and distributors shall not sell, give, furnish, rent or supply any equipment, fixtures or supplies, directly or indirectly, or through their subsidiaries or affiliates, to any retail licensee engaged in the selling of products of the brewing industry, except brewers and distributors may furnish draught beer or tapknobs, as required by Subsection 4.06.

This regulation is only declaratory of the law and is construed by the Commissioner to prohibit the furnishing, by brewers or distributors, either directly or indirectly, or through their subsidiaries or affiliates, to retail licensees of any equipment, fixtures or supplies of utilitarian value.

4.05. Sponsoring Athletic Contests- No distributor shall contribute to or support either directly or indirectly, any baseball, football, bowling, or other athletic team or contest, unless the participants are actual bona fide employees of the distributor and written permission is obtained from the Nonintoxicating Beer Commissioner. For the purpose of this regulation, any licensed brewers manufacturing beer in the State of West Virginia shall be considered a distributor.

No brewer shall contribute to or support, either directly or indirectly, any baseball, football, bowling or other athletic contest or team (except a recognized professional athletic team or contest) unless such brewer shall have first obtained written permission from the West Virginia Nonintoxicating Beer Commissioner to do so.

4.06. False Advertising of Draft Beer- Each faucet or tap from which beer is drawn from kegs must be identified with a knob showing the brand or name of brewer of the beer so dispensed.

4.07. Free Goods and Other Inducements- Any brewer or distributor or any salesman, agent or representative of any brewer or distributor who gives, either directly or indirectly, free goods or discounts to any retailer shall be subject to immediate revocation of their license, as provided in Section 13 of the West Virginia Nonintoxicating Beer Law.

Free goods or the giving free of a certain number of cases of beer or ale for each number or amount purchased will not be permitted.

No brewer, distributor, salesman or representative shall give to any retailer or any person working for or connected with such retailer, either

directly or indirectly, any present of more than nominal value; provided however, that nothing in this Regulation shall be construed as prohibiting brewers or their representatives, and distributors or their representatives, from purchasing at retail prices for the consumer, beer, ale or malt beverages in any licensed retail establishment.

In the event, however, any brewer or distributor or any salesman, agent or representative of any brewer or distributor, engages in consumer trade spending involving the purchasing of beer, ale or other malt beverages in unreasonable quantities in any licensed retail establishment, the same shall be deemed a violation of this Regulation and of Section 13 (e) of the West Virginia Non-intoxicating Beer Act.

Section 5. Sanitation

5.01. Health Permits- From and after April 15, 1968, a Class A Nonintoxicating Beer License, authorizing the sale of nonintoxicating beer for consumption on the licensed premises, will not be issued to any person, partnership, firm, association or corporation, unless the applicant shall have a PERMIT from the West Virginia Health Department, to operate a tavern in the premises set out and described in such applicant's application, nor will a license be transferred to a new location unless such licensee shall have a PERMIT from the West Virginia Health Department to operate a restaurant (tavern) in the new location, as described in licensee's application for transfer.

5.02. Health, Sanitation, Toilets- Taverns must be kept in a sanitary condition, as required by West Virginia Health Laws and regulations of the West Virginia Health Department. Tavern operators shall maintain separate toilets for each sex, properly labeled and conveniently located.

5.03. Sanitation Schools, Classes and Demonstrations- Brewers and wholesalers, either jointly or severally, with the cooperation of the West Virginia Health Department and consent, in writing, of the West Virginia Nonintoxicating Beer Commissioner, may hold classes for the instruction of tavern operators and employees in the proper method of cleansing and sterilization of glasses and other equipment used in the serving or dispensing of beer, ale or other malt beverages to the public; provided, no refreshments are served except beer for demonstration as to the impairment of its quality and taste by the use of improper cleansing and sterilization methods of such glasses and equipment.

5.04. Cleansing Beer Bottles, Pipe Lines, Registration-

(a) Cleansing of Beer Bottles and Bottling - Beer bottle soakers and cleansers shall be of such mechanical construction and operation as to entirely eliminate manual handling or contact with the bottles from the point the same are placed in the soaker until filled with beer and crowned. Soakers and

cleansers used must be so equipped as to provide, at the least, one outside and two inside brushings, and five individual rinsings of each bottle, using properly decreasing alkali solution, or equivalent, and at proper temperature, until the bottles reach the fresh water compartment.

(b) Cleansing of Beer Pipe Lines and Barrel Tubes - Beer pipe lines and barrel tubes must be cleansed simultaneously, not less than twice each week (approximately ninety-hour intervals) by the use of hydraulic pressure mechanism, hand pump suction or force cleaner, in conjunction with a suitable detergent, or detergent and sterilizer combined, or any other apparatus approved by the Commissioner. When coils are cleansed in either of the foregoing manner, the detergent must be permitted to remain in the line not less than ten minutes, and may lie still or be agitated. After cleansing, lines shall be rinsed with clear water until all chemicals have been removed. All compounds used for cleansing beer pipe lines and barrel tubes must be approved by the Sanitary Engineering Division of the West Virginia Department of Health.

(c) Pipe Lines and Equipment - The use of any tubing or pipes through which beer flows or is forced, other than tubing or pipes made of block tin, gutta percha, and other similar products, is hereby prohibited; and the use of rubber hose or tubing or any kindred products in connection with draught beer is prohibited.

(d) Beer May Be Gassed By Any of the Following Methods - By the use of carbonic gas (carbon dioxide), or by the use of electrical, hydraulic or mechanical pumps. In the event pumps are used, the intake for such pumps shall be from the outside of the building where fresh and clean air is available, and such intake must be protected by a suitable filter or filters.

(e) Cleansing and Sterilizing of Receptacles in Which Beer is Served - All glasses and similar containers used in serving beer shall, after each use

and before used again, be thoroughly (a) CLEANSED and (b) STERILIZED:

(a) Cleansing: Cleansing shall be effected by washing glasses and containers in hot water containing effective cleansing agent.

(b) Sterilization: Sterilization shall be effected by either of the following methods:

Method 1 - Immerse each glass or container for not less than one minute in clean water containing not less than one hundred parts per million of available chlorine. The glass or container shall be rinsed free from the washing solution under (a) before immersing the chlorine sterilizing solution. After the sterilizing operation the chlorine odor may be eliminated by draining the glass for a period or rinsing in clean water.

Method 2 - Immerse each glass or container for not less than two minutes in clean hot water maintained at a temperature of at least 170 degrees F.

Note: The most practical and effective arrangement for complying with Method 1 is to provide a small three-compartment vat. Each compartment should be provided with a means of draining. Hot and cold running water should be piped to the vat if available. The first compartment should contain the hot alkaline wash water, the second compartment clean rinse water, and the third compartment the chlorine sterilizing solution.

(f) Registration - Every person, firm or corporation conducting a business in the State of West Virginia which involves the cleansing of beer coils and barrel tubes shall register his or their name, home address, address of his or their place of business, and the method and chemicals used in the cleansing of such peer pipe lines and barrel tubes in the office of the Sanitary Engineer

of the Department of Health of West Virginia and in the Commissioner's office.
(Licensees who do their own cleansing shall register as in the case of a person, firm or corporation.)

All persons, firms or corporations engaged in the business of cleansing beer coils and barrel tubes shall furnish, without cost, to each retail dealer a record card form, which shall be approved by the Commissioner's office. Upon such record card form shall be shown the date of each cleansing, the method used, and shall be signed by the person who performed such cleansing. Such card shall provide for a period of six months, and at the end of each six months shall be signed by the licensee, notarized and forwarded immediately to the Commissioner's office. The card in use shall be kept upon the licensed premises, and shall be available at all times for inspection by sanitary engineers of the Department of Health of West Virginia, and agents and employees of the Commissioner's office.

Section 6. Employment

6.01. Unnaturalized Persons- The Commissioner may, at his discretion, refuse to issue any license to any retailer, or in case license has been issued, to revoke the same, when unnaturalized persons are permitted to serve or dispense beer at any retail outlet.

6.02. Persons Under Eighteen Years of Age- No person under eighteen years of age shall be employed in or allowed to serve or dispense beer in any tavern, excepting establishments holding Class "B" licenses.

Section 7. Hearings, Continuances and Suspensions

7.01. Continuances- Motion for must be made more than five days before the date set for hearing in the Notice served upon the licensee, or the licensee must put himself within the same rules for continuance, at the time set for hearing, as are required for continuances in civil or criminal trials in circuit courts.

7.02. Suspensions of Licenses- The license of any licensee requesting a continuance, as required under subsection 7.01 hereof, shall be suspended as of the date set out in the Notice for said hearing until the hearing shall be had, and the licensee shall not be permitted to sell or serve or permit the consumption of beer, ale or other malt beverages on the licensed premises pending such hearing.

7.03 Revocation or Suspension- The Commissioner may revoke or suspend any license for violation of the regulations of the Commissioner herein published or hereafter adopted.

Section 8. Cash, Worthless or "Cold" Checks

8.01. No distributor shall sell to any retailer any package, bottle, case or container of beer except for cash or a check drawn against a bank account of the retailer who is making the purchase.

8.02. All distributors must immediately, and in the regular course of business, deposit in the bank all checks given them by retailers for the purchase of beer. No distributor shall through himself, his agents or employees, enter into any agreement or understanding with any retailer to hold any checks so given.

The repeated giving of worthless checks by the retailer to the distributor or the repeated acceptance of worthless checks from the retailer by the distributor, shall be prima facie evidence of obtaining an extension of credit and shall, in the discretion of the Commissioner, be grounds for the revocation or suspension of such retailer's or distributor's license.

8.03. The giving of worthless checks in payment for licenses or renewal of licenses will result in an immediate revocation of license and forfeiture of bond.

Section 9. Deposit for Packages, Container Deposits, Rebates

9.01. Container Deposits, Rebates- On all wholesale and retail sales of beer, ale or other malt beverages in returnable bottles of any size, there shall be a minimum cash deposit charge of seventy-five cents per case regardless of case size.

Each brewer, distributor or retailer authorized by the Commissioner to sell, ship or deliver beer, ale or other malt beverages in West Virginia, or such brewer's, distributor's, or retailer's agents or employees shall be prohibited from buying, selling, renting, lending, giving, or offering to buy, sell, rent, lend or give returnable bottles upon which a deposit charge has been paid, such bottles, or bottles of the same type, color and size, shall be returned for rebate to the brewer or distributor to whom the deposit charge was paid in the cases in which originally sold or delivered.

Each brewer, distributor or retailer authorized by the Commissioner to sell, ship or deliver beer, ale or other malt beverages in West Virginia, shall accept for rebate all usable, returnable bottles upon which a deposit charge was made when sold or delivered, if such bottles are the same type, color and size and in the cases in which originally sold or delivered, and shall pay rebates in an amount equal to the deposit charge.

The permit of any brewer and the license of any distributor or retailer authorized by the Commissioner to sell or deliver beer, ale or other malt beverages in West Virginia, shall be cancelled or suspended if such brewer, distributor or retailer shall violate any of the provisions of this Regulation.

9.02. West Virginia Nonintoxicating Beer Distributors and their employees, agents or representatives, herceforth shall not redeem, acquire, procure or pick up any empty beer cases from retailers other than those belonging to the brewers which they as distributors represent.

Section 10. Chipped or Broken Bottles

10.01. No allowances shall be made by any distributor to any retailer on account of chipped bottles. Replacement may be made by any distributor to any retailer on account of broken bottles, where crown and neck are intact. Breweries may share equally with distributors in replacement of broken bottles where crown and neck are intact.

Section 11. Flat Beer

11.01. No allowance shall be made by any brewer or distributor to any retailer, nor shall any brewer make any allowance to any distributor on account of any claim for "flat" beer in excess of a ratio of one bottle to five hundred bottles in any one calendar month, except with the written approval of the Commissioner.

Any allowances made in excess of the rate of one bottle to five hundred bottles on account of claims for "flat" beer will subject the offending parties to a revocation of their licenses.

Section 12. Wholesale Prices

12.01. West Virginia licensed beer distributors shall not sell or deliver nonintoxicating beer, ale or other malt beverages to any retail nonintoxicating beer licensee, except and unless such distributor shall have filed the wholesale price of beer, ale or other malt beverages, by brands and container sizes, with the West Virginia Nonintoxicating Beer Commissioner, and shall have furnished retail nonintoxicating beer licensees with a printed, lithographed or mimeographed price list, on or before effective date, showing the wholesale price of such beer, ale or other malt beverages, by brand and container size.

Any planned change in the price list of beer, ale or other malt beverages as hereinbefore required must be filed with the Nonintoxicating Beer Commissioner, in duplicate, and a signed affidavit showing copy of letter including price change has been mailed to all distributors in trade area. One copy will be acknowledged by the West Virginia Nonintoxicating Beer Commissioner and returned to such distributor. New prices will then become effective within three working days after receipt of written acknowledgement from the West Virginia Nonintoxicating Beer Commissioner. Failure to put price changes into effect within three working days after written acknowledgement from the West Virginia Nonintoxicating Beer Commissioner will cause price change to become null and void.

Section 13. Platform Deliveries and Unauthorized Sales.

13.01. Except as otherwise permitted by law, distributors will make no platform deliveries except to persons known to be licensed retail dealers, or upon signed order from such known retail dealers.

Licensed retail dealers shall not sell or dispense nonintoxicating beer purchased or acquired from any source other than a licensed distributor or brewer under the laws of this State.

Any distributor or retailer who violates or aids, abets or acquiesces in the violation of this Regulation shall be deemed to be an unsuitable person to have a beer license.

Section 14. Brewers, Qualification, Shipment into State, Bond, Contract

14.01. West Virginia distributors shall not purchase, receive or distribute any beer, ale or other malt beverages from any brewer (includes manufacturers, bottlers, producers and importers), whether situate in or out of the State of West Virginia, unless such brewer shall have qualified for the manufacture or shipment into the State of West Virginia of beer, ale or other malt beverages, by posting bond with the West Virginia Nonintoxicating Beer Commissioner, conditioned upon the faithful observance of the State of West Virginia Nonintoxicating Beer Law and the regulations promulgated thereunder by the Commissioner, and entering into an agreement with the West Virginia Nonintoxicating Beer Commissioner which shall provide:

(a) For the filing of such written reports as may be required by the Commissioner;

(b) For the payment on behalf of its distributors, of the beer excise (barrel) tax in monthly advance payments, or as may be otherwise directed by regulation or statute;

(c) For the delivery, upon request, to the office of the Commissioner, such brewer's records, papers and accounts, for the purpose of inspecting and auditing the same, or the payment of the expense of an auditor(s) of the Commissioner while so inspecting and auditing such records in the office of the brewer; and

(d) For the posting of bond, with surety, in the amount of Ten Thousand Dollars (\$10,000.00) conditioned upon the compliance by the brewer with all rules, regulations and laws of the State of West Virginia relating to nonintoxicating beer.

14.02. Brewer-Distributor Termination - Statement of Policy- The West Virginia Nonintoxicating Beer Act leaves brewers free to select the West Virginia Distributors with whom they will deal, and leaves the West Virginia

Distributors free to select the brewers with which they will deal. However, in order to effectively carry out the purposes and objectives of said Act, it is necessary to place certain procedural limitations upon the exercise by brewers and distributors of their freedom of selection because at certain times in the past, brewers and distributors have committed unfair trade practices in the way in which they have terminated their dealings with each other. It is to eliminate such unfair trade practices that the procedural requirements contained in subsections 14.03, 14.04 and 14.05 of this regulation shall apply in the future to all terminations of dealings between brewers, whether resident or nonresident, and West Virginia Distributors.

14.03. Termination by Brewer of Dealings with Distributor- (A) The bond and agreement of any brewer authorized by the Commissioner to sell or deliver beer, ale or other malt beverages to any licensed West Virginia distributor shall be cancelled or suspended upon termination by the brewer of dealings with a distributor in West Virginia, unless such brewer shall have:

(1) Evaluated at an executive level the statements and recommendations of the brewery field representative;

(2) Made the decision to terminate at the level of a divisional office or the head office of the brewer as distinguished from the level of the brewery field representative;

(3) Notified the Commissioner and the West Virginia distributor in writing of the brewer's termination of dealings with the distributor;

(4) Offered to purchase all marketable beer, ale or other malt beverages manufactured by the brewer in the possession of the West Virginia distributor as of the date of termination at the then existing brewery platform price, plus transportation; and

(5) Refrained from making any statement, or performing or causing to be performed, any act (other than such termination) detrimental to the distributor or to the distributor's business.

(B) The license of any distributor, authorized by the Commissioner to distribute beer, ale or other malt beverages to licensed retailers in West Virginia, shall be cancelled or suspended if, after receipt from a brewer of such written notice of termination, said distributor shall:

(1) Fail or refuse to sell to the brewer all marketable beer, ale or other malt beverages manufactured by the brewer and in the possession of the distributor as of the date of such termination at the then existing brewery platform price, plus transportation; or

(2) Make any statement, or perform or cause to be performed, any act detrimental to the brewer or to the brewer's product or business.

14.04. Termination by Distributor of Dealings With Brewer- (A) The license of any distributor authorized by the Commissioner to distribute beer, ale or other malt beverages to licensed retailers in West Virginia shall be cancelled or suspended upon the termination by the distributor of dealings with a brewer, unless such distributor shall have:

(1) Notified the Commissioner and the brewer, in writing, of the distributor's termination of dealings with the brewer;

(2) Offered to sell to the brewer all marketable beer, ale or other malt beverages manufactured by the brewer in the possession of the West Virginia distributor as of the date of the termination at the then existing brewery platform price, not including transportation; and

(3) Refrained from making any statement, or performing or causing to be performed, any act (other than such termination) detrimental to the brewer or to the brewer's product or business.

(B) The bond and agreement of any brewer authorized by the Commissioner to sell or deliver beer, ale or other malt beverages to any licensed West Virginia distributor shall be cancelled or suspended if, after receipt from a West Virginia distributor or such a written notice of termination, said brewer shall:

(1) Fail or refuse to purchase from the distributor all marketable beer, ale or other malt beverages manufactured by the brewer and in the possession of the distributor as of the date of such termination at the then existing brewery platform price, not including transportation; or

(2) Make any statement, or perform or cause to be performed, any act detrimental to the distributor or to the distributor's business.

14.05. Hearing- If the Commissioner has grounds to believe that there has occurred a violation of this regulation by either a brewer or a distributor, the Commissioner may in his discretion order a hearing to determine whether or not a violation has occurred. If such a hearing is ordered by the Commissioner, the same shall be held in the office of the Commissioner in the city of Charleston, West Virginia, within thirty days after the termination in question. Any such hearing shall be conducted in the manner described in the West Virginia Nonintoxicating Beer Act, and the burden of proving that a violation has been committed shall rest upon the brewer or distributor, as the case may be, against whom the termination has been effected. The Commissioner shall, within ten days after the close of any such hearing, make his determination and issue an appropriate order of findings as to whether or not a violation of this Regulation has occurred.

14.06. Brewery Representatives, Permits, Fee, Term, Suitability- No person shall act as agent, representative, solicitor or salesman in the State of West Virginia for any manufacturer of beer, ale or other malt beverages until such person shall have obtained a permit to act as such agent, representative, solicitor or salesman, from the West Virginia Nonintoxicating Beer Commissioner.

Application: Application for such permit, accompanied by photograph (2" x 3") of applicant, shall be made on such form as shall be prescribed and furnished by the Commissioner.

Fee: The fee for such permit to act as an agent, representative, solicitor or salesman shall be \$10.00.

Term: All such permits shall expire on the 30th day of September next succeeding the date of issuance, unless sooner suspended or revoked.

Suitability: Permits shall be issued to any suitable persons upon showing:

- (a) He or she is a citizen of the United States of America;
- (b) More than 18 years of age;
- (c) Has never been convicted of a felony;
- (d) Has not been convicted of a violation of federal or state liquor or beer law;
- (e) Has not had a similar license or permit revoked or suspended in this or any other state;
- (f) Is a person of good morals and reputation;
- (g) Is employed by a beer, ale or other malt beverage manufacturer or brewer qualified to sell or ship such products into the State of West Virginia.

Bond: No permit shall be issued unless bond, with some solvent surety company approved by the West Virginia Nonintoxicating Beer Commissioner, in the penalty of \$500.00, conditioned upon the observance of the West Virginia

Nonintoxicating Beer Law and Regulations promulgated thereunder by the Commissioner, is filed with the Commissioner.

Suspension or Revocation: Permits may be suspended or revoked by the Commissioner for noncompliance with the West Virginia Nonintoxicating Beer Law and regulations promulgated thereunder by the Commissioner, or false or fraudulent representations made in securing such permits, after a hearing upon 10 days notice, in writing, of the charge or charges, time and place of hearing thereon, served upon such permittee by registered mail, addressed to the office of such permittee's principal, as set out in the application.

14.07. Brewers and Distributors Interceding for Retailers- No brewer, distributor or representative of a firm or corporation engaged in the brewing or distributing of beer will be permitted to intercede on behalf of any retailer with respect to a refusal or revocation of a license. Any violation of this regulation may constitute sufficient grounds to revoke the license of the brewer or distributor so interceding.

14.08. Brewers and Distributors Territorial Assignments- Effective October 2, 1961, all brewers shall submit to the office of the West Virginia Nonintoxicating Beer Commissioner, in duplicate, written description showing the assigned territories by brewers to each distributor which shall bear the signature of the brewer or its authorized agent and the distributor involved.

Duly assigned territories shall then become the responsibility of the brewer and distributor. No distributor shall sell any beer, ale or other malt beverages to any licensee, and no licensee shall purchase any beer, ale or other malt beverages except from duly authorized distributors from territories assigned by brewer to distributor. The brewer or duly authorized agent shall be responsible for submitting, by registered mail, to the office of the Nonintoxicating Beer Commissioner, two copies of any new written

description showing any proposed change of territory, including signatures of brewer or authorized agent or distributor. Upon written acknowledgement by the Nonintoxicating Beer Commissioner, new territorial assignments will then become effective.

Any distributor or brewer violating the provisions of this Regulation shall be subject to a hearing before the Nonintoxicating Beer Commissioner to show cause why the license or permit of the distributor or brewer shall not be suspended or revoked.



NONINTOXICATING BEER COMMISSIONER

CHARLESTON 25305

JOHN D. ROCKEFELLER IV
Governor

December 30, 1982

JOHN D. HOFF
Commissioner

The Honorable A. James Manchin
Secretary of State
Capitol Building
Charleston, West Virginia 25305

Dear Mr. Manchin:

Pursuant to The West Virginia Code of 1931, as amended, Chapter 29A, Article 2, Section 5, the Rules and Regulations of the Office of Nonintoxicating Beer Commissioner are herewith refiled in their entirety.

Some deletions were made in the regulations currently on file, and these are so noted in Section 1.03, item #8 of the refiled regulations.

Very truly yours,

clerical changes only. Hoff

John D. Hoff
John D. Hoff
Commissioner

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 12-30-82
Administrative Law Division

JDH/gbs

RULES AND REGULATIONS OF THE
WEST VIRGINIA NONINTOXICATING BEER COMMISSIONER

PREFATORY REMARKS

The laws of the State of West Virginia charges the Commissioner with the responsibility of the enforcement of the nonintoxicating beer law and authorizes the Commissioner to adopt, promulgate, repeal, rescind and amend rules, regulations and standards for the brewing, distributing and retail sale of beer.

In conformity with the authority vested in the Commissioner by law, the following regulations have been adopted.

1. GENERAL
 - 1.01. - Scope
 - 1.02. - Authority
 - 1.03. - Effective Date
Amendments and Changes
 - 1.04. - Filing Date
 - 1.05. - Certification
2. LICENSES
 - 2.01. - Transfer
 - 2.02. - Abandonment, Leasing
or Loaning
 - 2.03. - Establishment
 - 2.04. - Clubs
 - 2.05. - Posting Licenses
 - 2.06. - Post Blood-Alcohol Chart
3. LABELS, BREWER'S REPORTS, TAXATION, DISTRIBUTOR'S REPORTS, RECORD MANAGEMENT BY BREWERS AND DISTRIBUTORS
 - 3.01. - Approval of Commissioner
 - 3.02. - Serving Bottled Beer With
No Beer Labels
 - 3.03. - Brewer's Reports, Taxes
 - 3.04. - Distributor's Reports
 - 3.05. - Records of Brewers and
Distributors
4. ADVERTISING
 - 4.01. - General Guidelines
 - 4.02. - Posters, Placards, Mirrors,
Windows, Doors
 - 4.03. - Signs
 - 4.04. - Equipment, Fixtures or
Supplies
 - 4.05. - Sponsoring Athletic Events
 - 4.06. - False Advertising of Draft
 - 4.07. - Free Goods and Other In-
ducements
5. SANITATION
 - 5.01. - Health Permits
 - 5.02. - Health, Sanitation, Toilets
 - 5.03. - Sanitation Schools, Classes
and Demonstrations
 - 5.04. - Cleaning Beer Bottles, Pipe
Lines, Registration
6. EMPLOYMENT
 - 6.01. - Unnaturalized Persons
 - 6.02. - Persons Under Eighteen
7. HEARINGS, CONTINUANCES, SUSPENSIONS
 - 7.01. - Continuances
 - 7.02. - Suspensions of Licenses
 - 7.03. - Revocation or Suspension
8. WORTHLESS OR 'COLD' CHECKS
 - 8.01. - Deposit of Checks
 - 8.02. - Holding of Checks
 - 8.03. - Revocation of License
9. DEPOSIT FOR PACKAGE CONTAINER DEPOSITS, REBATES
 - 9.01. - Container Deposits, Re-
bates
 - 9.02. - Redeem, Acquire, Procure
or Pick Up Empty Cases
10. CHIPPED OR BROKEN BOTTLES
 - 10.02. - Allowances & Replacements
11. FLAT BEER
 - 11.02. - Allowances
12. WHOLESALE PRICES
 - 12.01. - Prices & Price Changes
13. PLATFORM DELIVERIES AND UNAUTHORIZED SALES
 - 13.01. - Licensed Retail Dealer
and Distributor
14. BREWERS, QUALIFICATION, SHIPMENT INTO STATE, BOND AND CONTRACT
 - 14.01. - General
 - 14.02. - Brewer/Distributor Term-
ination
 - 14.03. - Termination by Brewer
 - 14.04. - Termination by Distribu-
tor
 - 14.05. - Hearings
 - 14.06. - Brewery Representative
Permit, Fee, Term, Suit-
ability
 - 14.07. - Brewers/Distributors In-
terceding for Retailers
 - 14.08. - Brewers/Distributors
Territorial Assignments
15. BREWERY PRICES
 - 15.01. - Filing With Commissioner

Section 15. Brewery Prices: Filing With Commissioner

15.01. Effective November 1, 1968, breweries licensed to do business in the State of West Virginia are prohibited from engaging in price discrimination and making any "secret" deals with distributors in the State of West Virginia.

No brewer shall discriminate in price, allowance, rebate, refund, commission, discount or service between wholesaler's purchasing beer, ale or other malt beverages, and no brewer can threaten a wholesaler with discrimination to change or maintain resale prices.

Brewers shall not sell or deliver nonintoxicating beer, ale or other malt beverages to any licensed distributors, except and unless such brewer shall have filed the brewery price of beer, ale or other malt beverages, by brands and container sizes, with West Virginia Nonintoxicating Beer Commissioner.

Any planned change in the price of beer, ale or other malt beverages, as hereinbefore required, must be filed with the Nonintoxicating Beer Commissioner, in duplicate. One copy may be acknowledged by the West Virginia Nonintoxicating Beer Commissioner and returned to such brewer. New prices will then become effective three working days after receipt of written acknowledgement from the West Virginia Nonintoxicating Beer Commissioner. Failure to put price changes into effect within three working days after written acknowledgement from the West Virginia Nonintoxicating Beer Commissioner will cause price changes to become null and void.