

S HB 2478

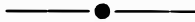
FILED

2005 APR -1 P 5: 53

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

House Bill No. 2478

(By Mr. Speaker, Mr. Kiss, and Delegates Craig,
Amores, Kominar and Varner)



Passed March 21, 2005

In Effect Ninety Days from Passage

FILED

2005 APR -1 P 5: 54

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H. B. 2478

(BY MR. SPEAKER, MR. KISS, AND DELEGATES CRAIG,
AMORES, KOMINAR AND VARNER)

(Passed March 21, 2005; in effect ninety days from passage.)

AN ACT to amend and reenact §11-16-21 of the Code of West Virginia, 1931, as amended, relating to removing the prohibition against brewers of nonintoxicating beer requiring distributors to submit certain financial documents.

Be it enacted by the Legislature of West Virginia:

That §11-16-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§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.

- 1 (a) On and after the first day of July, one thousand nine
- 2 hundred seventy-one, it shall be unlawful for any brewer to

3 transfer or deliver to a distributor any nonintoxicating beer, ale
4 or other malt beverage or malt cooler without first having
5 entered into an equitable franchise agreement with such
6 distributor, which franchise agreement shall be in writing, shall
7 be identical as to terms and conditions with all other franchise
8 agreements between such brewer and its other distributors in
9 this state and which shall contain a provision in substance or
10 effect as follows:

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

27 (2) Whenever the manufacturing, bottling or other produc-
28 tion rights for the sale of nonintoxicating beer at wholesale of
29 any brewer is acquired by another brewer, the franchised
30 distributor of the selling brewer shall be entitled to continue
31 distributing the selling brewer's beer products as authorized in
32 the distributor's existing franchise agreement and the acquiring
33 brewer shall market all the selling brewer's beer products
34 through said franchised distributor as though the acquiring
35 brewer had made the franchise agreement and the acquiring
36 brewer may terminate said franchise agreement only in accor-

37 dance with subdivision (2), subsection (b) of this section:
38 *Provided*, That the acquiring brewer may distribute any of its
39 other beer products through its duly authorized franchises in
40 accordance with all other provisions of this section.

41 (b) It shall also be unlawful:

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

52 (2) For any brewer or brewpub or distributor, or any officer,
53 agent or representative of any brewer or brewpub or distributor,
54 to cancel, terminate or rescind without due regard for the
55 equities of such brewer or brewpub or distributor and without
56 just cause, any franchise agreement, whether oral or written,
57 and in the case of an oral franchise agreement, whether the
58 same was entered into on or before the eleventh day of June,
59 one thousand nine hundred seventy-one, and in the case of a
60 franchise agreement in writing, whether the same was entered
61 into on, before or subsequent to the first day of July, one
62 thousand nine hundred seventy-one. The cancellation, termina-
63 tion or rescission of any such franchise agreement shall not
64 become effective for at least ninety days after written notice of
65 such cancellation, termination or rescission has been served on
66 the affected party and the Commissioner by certified mail,
67 return receipt requested: *Provided*, That said ninety-day period
68 and said notice of cancellation, termination or rescission shall
69 not apply if such cancellation, termination or rescission is

70 agreed to in writing by both the brewer and the distributor
71 involved; or

72 (c) In the event a distributor desires to sell or transfer his or
73 her franchise, such distributor shall give to the brewer or
74 brewpub at least sixty days' notice in writing of such impending
75 sale or transfer and the identity of the person, firm or corpora-
76 tion to whom such sale or transfer is to be made and such other
77 information as the brewer may reasonably request. Such notice
78 shall be made upon forms and contain such additional informa-
79 tion as the Commissioner by rule or regulation shall prescribe.
80 A copy of such notice shall be forwarded to the Commissioner.
81 The brewer or brewpub shall be given sixty days to approve or
82 disapprove of such sale or transfer. If the brewer or brewpub
83 neither approves nor disapproves thereof within sixty days of
84 the date of receipt of such notice, the sale or transfer of such
85 franchise shall be deemed to be approved by such brewer. In the
86 event the brewer or brewpub shall disapprove of the sale or
87 transfer to the prospective franchisee, transferee or purchaser,
88 such brewer or brewpub shall give notice to the distributor of
89 that fact in writing, setting forth the reason or reasons for such
90 disapproval. The approval shall not be unreasonably withheld
91 by the brewer or brewpub. The fact that the prospective
92 franchisee, transferee or purchaser has not had prior experience
93 in the nonintoxicating beer business or beer business shall not
94 be deemed sufficient reason in and of itself for a valid disap-
95 proval of the proposed sale or transfer, but may be considered
96 in conjunction with other adverse factors in supporting the
97 position of the brewer or brewpub. Nor may the brewer or
98 brewpub impose requirements upon the prospective franchisee,
99 transferee or purchaser which are more stringent or restrictive
100 than those currently demanded of or imposed upon the brewer's
101 or brewpub's or other distributors in the State of West Virginia.
102 A copy of such notice of disapproval shall likewise be for-
103 forwarded to the Commissioner and to the prospective franchisee,
104 transferee or purchaser. In the event the issue be not resolved

105 within twenty days from the date of such disapproval, either the
106 brewer, brewpub, distributor or prospective franchisee, trans-
107 feree or purchaser shall notify the other parties of his or her
108 demand for arbitration and shall likewise notify the Commis-
109 sioner thereof. A dispute or disagreement shall thereupon be
110 submitted to arbitration in the county in which the distributor's
111 principal place of business is located by a board of three
112 arbitrators, which request for arbitration shall name one
113 arbitrator. The party receiving such notice shall within ten days
114 thereafter by notice to the party demanding arbitration name the
115 second arbitrator or, failing to do so, the second arbitrator shall
116 be appointed by the chief judge of the circuit court of the
117 county in which the distributor's principal place of business is
118 located on request of the party requesting arbitration in the first
119 instance. The two arbitrators so appointed shall name the third
120 or, failing to do so within ten days after appointment of the
121 second arbitrator, the third arbitrator may be appointed by said
122 chief judge upon request of either party. The arbitrators so
123 appointed shall promptly hear and determine and the questions
124 submitted pursuant to the procedures established by the
125 American Arbitration Association and shall render their
126 decision with all reasonable speed and dispatch but in no event
127 later than twenty days after the conclusion of evidence. Said
128 decision shall include findings of fact and conclusions of law
129 and shall be based upon the justice and equity of the matter.
130 Each party shall be given notice of such decision. If the
131 decision of the arbitrators be in favor of or in approval of the
132 proposed sale or transfer, the brewer or brewpub shall forthwith
133 agree to the same and shall immediately transfer the franchise
134 to the proposed franchisee, transferee or purchaser unless notice
135 of intent to appeal such decision is given the arbitrators and all
136 other parties within ten days of notification of such decision. If
137 any such party deems himself or herself aggrieved thereby, such
138 party shall have a right to bring an appropriate action in circuit
139 court. Any and all notices given pursuant to this subsection

140 shall be given to all parties by certified or registered mail,
141 return receipt requested.

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

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

Chandy White
Chairman Senate Committee

D. Rubin Bury
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Darrell Holmes
Clerk of the Senate

Bregan D. Enaf
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

[Signature]
Speaker of the House of Delegates

The within *is approved* this the *18th*
day of *April*, 2005.

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

Date 3/28/05

Time 3:45pm