WEST VIRGINIA CODE: §11-16-21

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

(a) On and after July 1, 1971, 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 and any amendments to that agreement shall be in writing, shall be identical as to terms and conditions with all other franchise agreements and any amendments between such brewer and its other distributors in this state in its approved franchise distributor network, all as approved by the commissioner 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: (A) To establish his or her selling prices; (B) to have the distribution rights to the brands and line extensions of nonintoxicating beer products that are bound by franchise agreements specifying a distributor's assigned territory and that are assigned to a franchise distributor network, and, further, that the distributor may determine which brands and line extensions of nonintoxicating beer products he or she wishes to handle; and (C) to determine the efforts and resources which the distributor will exert to develop and promote the sale of the brewer's nonintoxicating beer products handled by the distributor. However, since the brewer's nonintoxicating beer products, brands and line extensions shall only be handled by the distributor with a franchise agreement for a certain territory in West Virginia as a part of the brewer's overall franchise distributor network in West Virginia and will not be sold by other distributors in the territory, the brewer is dependent upon the appointed distributor alone for the sale of such products in the assigned territory. Consequently, the brewer expects that the distributor will price competitively the nonintoxicating beer products handled by the distributor, devote reasonable effort and resources to the sale of such products and maintain a satisfactory sales level.

(2) The franchise agreement binds the parties so that a distributor, appointed by a brewer, may distribute all of the brewer's nonintoxicating beer products, brands or family of brands imported and offered for sale in West Virginia, including, but not limited to: existing brands, line extensions and new brands in the brewer's assigned territory for the distributor. All brands and line extensions being imported or offered for sale in West Virginia must be listed by the brewer in the franchise agreement or a written amendment to the franchise agreement. A franchise agreement may be amended by mutual written agreement of the parties as approved by the commissioner with identical terms and conditions for a brewer

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and all of its distributors. Any approved amendment to the franchise agreement becomes a part of the franchise agreement.

(3) 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 and franchise distributor network of the selling brewer shall be entitled to continue distributing the selling brewer's nonintoxicating beer products as authorized in the franchised distributor's existing franchise agreement and the acquiring brewer shall market all the selling brewer's nonintoxicating beer products through said franchised distributor and franchise distributor network 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 nonintoxicating beer products through its duly authorized franchises and franchise distributor network in accordance with all other provisions of this section. Further, this subdivision shall apply to the brewer, successor brewers and also any successor entities of a brewer who shall be bound by the existing franchise agreement and the franchise distributor network, unless all the parties mutually agree, in writing, to change or cancel the existing franchise agreement and franchise distributor network or unless the brewer terminates a distributor as provided in this article and the promulgated rules.

(b) It shall also be unlawful:

(1) For any brewer, resident brewer or distributor, or any officer, agent or representative of any brewer, resident brewer 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, resident brewer or distributor, or any officer, agent or representative of any brewer, resident brewer or distributor, to cancel, terminate or rescind without due regard for the equities of such brewer, resident brewer 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 June 11, 1971, and in the case of a franchise agreement in writing, whether the same was entered into on, before or subsequent to July 1, 1971. 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.

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(c) In the event a distributor desires to sell or transfer his or her franchise and assigned territory in the brewer or resident brewer's franchise distributor network, such distributor shall give to the brewer, or resident brewer 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 or resident 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 resident brewer shall be given sixty days to approve or disapprove of such sale or transfer. If the brewer or resident brewer 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 or resident brewer. In the event the brewer or resident brewer shall disapprove of the sale or transfer to the prospective franchisee, transferee or purchaser, such brewer or resident brewer 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 resident brewer. 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 resident brewer. Nor may the brewer or resident brewer 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 or resident brewers 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, resident brewer, 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 resident brewer

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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 resident brewer shall constitute grounds for the forfeiture of the bond furnished by such brewer or resident brewer in accordance with the provisions of section twelve of this article and shall also constitute grounds for sanctions in accordance with sections twenty-three and twenty-four 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 resident brewer and such distributor and, in granting an injunction to a distributor, the court shall provide that the brewer or resident brewer so enjoined shall not supply the customers or territory of the distributor while the injunction is in effect.

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