

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1971

ENROLLED

SENATE BILL NO. 197

(By Mr. FANNIN)

PASSED MARCH 13 1971

In Effect NINETY DAYS Passage
From

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE

THIS DATE 4-2-71

1971

ENROLLED

Senate Bill No. 197

(By MR. FANNING)

[Passed March 13, 1971; in effect ninety days from passage.]

AN ACT to amend article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-b, relating to the sale of non-intoxicating beer, ale or other malt beverage; specifying certain unlawful acts of brewers, their distributors and their officers, agents and representatives; requiring all franchise agreements between a brewer and its distributors to be equitable, in writing and uniform; specifying certain provisions which must be contained in any such franchise agreement; providing that any such franchise agreement may not be cancelled, terminated or rescinded without due regard for the equities of the brewer and

distributor and without just cause; providing that any such cancellation, termination or rescission shall not be effective for at least ninety days after written notice; authorizing court action with respect to the cancellation, termination or rescission of a franchise agreement for certain reasons; specifying that the bond of any brewer may be cancelled for any violation of the section; and authorizing court action to enjoin the cancellation, termination or rescission of any such franchise agreement.

Be it enacted by the Legislature of West Virginia:

That article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirteen-b, to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-13b. Unlawful acts of brewers and distributors; requirements as to franchise agreements; penalties; injunctions.

- 1 (a) On and after July one, one thousand nine hundred
- 2 seventy-one, it shall be unlawful for any brewer to
- 3 transfer or deliver to a distributor any nonintoxicating

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

11 The brewer recognizes that the distributor is free to
12 manage his business in the manner the distributor deems
13 best, and that this prerogative vests in the distributor
14 the exclusive right to establish his selling prices, to select
15 the brands of beer he wishes to handle, and to determine
16 the efforts and resources which the distributor will
17 exert to develop and promote the sale of the brewer's
18 products handled by the distributor. However, since the
19 brewer does not expect that its products handled by
20 the distributor will be sold by others in the territory
21 assigned to the distributor, the brewer is dependent upon
22 the distributor alone for the sale of such products in said
23 territory. Consequently, the brewer expects that the
24 distributor will price competitively the products handled

25 by the distributor, devote reasonable effort and resources
26 to the sale of such products and maintain a satisfactory
27 sales level.

28 (b) It shall also be unlawful:

29 (1) For any brewer or distributor, or any officer,
30 agent or representative of any brewer or distributor, to
31 coerce or persuade or attempt to coerce or persuade any
32 person licensed to sell, distribute or job nonintoxicating
33 beer, ale or other malt beverage at wholesale or retail
34 to enter into any contracts or agreements, whether written
35 or oral, or to take any other action, which will violate or
36 tend to violate any provision of this article or any of
37 the rules, regulations, standards, requirements or orders
38 of the commissioner promulgated as provided in section
39 fourteen of this article; or

40 (2) For any brewer or distributor, or any officer, agent
41 or representative of any brewer or distributor, to can-
42 cel, terminate or rescind without due regard for the
43 equities of such brewer or distributor, and without just
44 cause, any franchise agreement, whether oral or written,
45 and in the case of an oral franchise agreement, whether

46 the same was entered into on or before the effective
47 date of this section and prior to July one, one thousand
48 nine hundred seventy-one, and in the case of a franchise
49 agreement in writing, whether the same was entered
50 into on, before or subsequent to July one, one thousand
51 nine hundred seventy-one. The cancellation, termination
52 or rescission of any such franchise agreement shall not
53 become effective for at least ninety days after written
54 notice of such cancellation, termination or rescission has
55 been served on the affected party and the commission-
56 er by certified mail, return receipt requested: *Provided,*
57 That said ninety-day period and said notice of can-
58 cellation, termination or rescission shall not apply if such
59 cancellation termination or rescission is agreed to in writ-
60 ing by both the brewer and the distributor involved.

61 (c) The violation of any provision of this section by
62 any brewer shall constitute grounds for the forfeiture
63 of the bond furnished by such brewer in accordance
64 with the provisions of section five of this article. More-
65 over, any circuit court of the county in which a distri-
66 butor's principal place of business is located shall have

67 the jurisdiction and power to enjoin the cancellation,
68 termination or rescission of any franchise agreement be-
69 tween a brewer and such distributor, and in granting
70 an injunction to a distributor, the court shall provide
71 that the brewer so enjoined shall not supply the cus-
72 tomers or territory of the distributor while the injunction
73 is in effect.

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

Russell G. Beall
Chairman Senate Committee

Phyllis J. Rutledge
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Thomas Meyer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

E. Hans McCoubert
President of the Senate

Lewis N. McManus
Speaker House of Delegates

The within *approved* this the *1st*
day of *April*, 1971.

Arch A. Shaver Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/19/71

Time 11:00a.m.

RECEIVED

APR 2 11 50 PM '71

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA