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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1976

— ● —

ENROLLED

Committee Substitute
for

HOUSE BILL No. 862

(By Mr. Speaker, Mr. McManus and
Mr. Rollins)

— ● —

PASSED March 10, 1976

In Effect from Passage



FILE IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/18/76

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 862

(By MR. SPEAKER, MR. MCMANUS, and MR. ROLLINS)

(Originating in the House Committee on the Judiciary)

[Passed March 10, 1976; in effect from passage.]

AN ACT to amend and reenact section thirteen-b, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the rights of a distributor under franchise agreement with a brewer.

Be it enacted by the Legislature of West Virginia:

That section thirteen-b, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted 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 transfer
3 or deliver to a distributor any nonintoxicating beer, ale or
4 other malt beverage without first having entered into an
5 equitable franchise agreement with such distributor, which
6 franchise agreement shall be in writing, shall be identical

7 as to terms and conditions with all other franchise agreements
8 between such brewer and its other distributors in this state,
9 and which shall contain a provision in substance or effect as
10 follows:

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

26 Whenever the manufacturing, bottling, or other production
27 rights for the sale of nonintoxicating beer at wholesale of any
28 brewer is acquired by another brewer, the franchised dis-
29 tributor of the selling brewer shall be entitled to continue
30 distributing the selling brewer's beer products as autho-
31 rized in the distributor's existing franchise agreement, and the
32 acquiring brewer shall market all the selling brewer's beer
33 products through said franchised distributor as though the
34 acquiring brewer had made the franchise agreement, and the
35 acquiring brewer may terminate said franchise agreement only
36 in accordance with subsection (b) (2) of this section: *Provided*,
37 That the acquiring brewer may distribute any of its other
38 beer products through its duly authorized franchises in
39 accordance with all other provisions of this section.

40 (b) It shall also be unlawful:

41 (1) For any brewer or distributor, or any officer, agent or
42 representative of any brewer or distributor, to coerce or
43 persuade or attempt to coerce or persuade any person licensed
44 to sell, distribute or job nonintoxicating beer, ale or other

45 malt beverage at wholesale or retail to enter into any
46 contracts or agreements, whether written or oral, or to take
47 any other action, which will violate or tend to violate any
48 provision of this article or any of the rules, regulations,
49 standards, requirements or orders of the commissioner pro-
50 mulgated as provided in section fourteen of this article; or

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

71 (c) The violation of any provision of this section by any
72 brewer shall constitute grounds for the forfeiture of the bond
73 furnished by such brewer in accordance with the provisions of
74 section five of this article. Moreover, any circuit court of
75 the county in which a distributor's principal place of business
76 is located shall have the jurisdiction and power to enjoin the
77 cancellation, termination or rescission of any franchise agree-
78 ment between a brewer and such distributor, and in granting an
79 injunction to a distributor, the court shall provide that the
80 brewer so enjoined shall not supply the customers or territory
81 of the distributor while the injunction is in effect.

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

James L. Davis
Chairman Senate Committee

Robert C. Johnston
Chairman House Committee

Originated in the House.

Takes effect from passage.

John Sullivan, Jr.
Clerk of the Senate

W. A. Blankenship
Clerk of the House of Delegates

H. B. Griffith
President of the Senate

Louis F. W. Mann
Speaker House of Delegates

The within approved this the 16th
March, 1976.
day of _____

Richard S. Mann, Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/12/76
Time 4:10 p.m.