WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976

ENROLLED
Committee Substitute for
HOUSE BILL No. 862

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

PASSED March 16, 1976

In Effect from Passage

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/18/76
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 seventy-one, it shall be unlawful for any brewer to transfer or deliver to a distributor any nonintoxicating beer, ale or other malt beverage without first having entered into an equitable franchise agreement with such distributor, which franchise agreement shall be in writing, shall be identical
as to terms and conditions with all other franchise agreements between such brewer and its other distributors in this state, and which shall contain a provision in substance or effect as follows:

The brewer recognizes that the distributor is free to manage his business in the manner the distributor deems best, and that this prerogative vests in the distributor the exclusive right to establish his selling prices, to select the brands of beer he wishes to handle, and to determine the efforts and resources which the distributor will exert to develop and promote the sale of the brewer's products handled by the distributor. However, since the brewer does not expect that its products handled by the distributor will be sold by others in the territory assigned to the distributor, the brewer is dependent upon the distributor alone for the sale of such products in said territory. Consequently, the brewer expects that the distributor will price competitively the products handled by the distributor, devote reasonable effort and resources to the sale of such products and maintain a satisfactory sales level.

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 of the selling brewer shall be entitled to continue distributing the selling brewer's beer products as authorized in the distributor's existing franchise agreement, and the acquiring brewer shall market all the selling brewer's beer products through said franchised distributor as though the acquiring brewer had made the franchise agreement, and the acquiring brewer may terminate said franchise agreement only in accordance with subsection (b) (2) of this section: Provided, That the acquiring brewer may distribute any of its other beer products through its duly authorized franchises in accordance with all other provisions of this section.

(b) It shall also be unlawful:

(1) For any brewer or distributor, or any officer, agent or representative of any 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 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 pro-
mulgated as provided in section fourteen of this article; or

(2) For any brewer or distributor, or any officer, agent
or representative of any brewer or distributor, to cancel,
terminate or rescind without due regard for the equities of
such 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 the effective date of this section
and prior to July one, one thousand nine hundred seventy-one,
and in the case of a franchise agreement in writing, whether
the same was entered into on, before or subsequent to July
one, one thousand nine hundred seventy-one. The cancella-
tion, 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.

(c) The violation of any provision of this section by any
brewer shall constitute grounds for the forfeiture of the bond
furnished by such brewer in accordance with the provisions of
section five 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 agree-
ment between a brewer and such distributor, and in granting an
injunction to a distributor, the court shall provide that the
brewer so enjoined shall not supply the customers or territory
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

Governor

Originated in the House.
Takes effect from passage.

J. B. O'Neal  
Clerk of the Senate

G. Blankenship  
Clerk of the House of Delegates

T. B. Woody  
President of the Senate

Lewis F. McFann  
Speaker House of Delegates

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

Governor
PRESENTED TO THE GOVERNOR

Date: 3/12/76

Time: 4:10 p.m.