WEST VIRGINIA LEGISLATURE

ENROLLED

SENATE BILL NO. 727

(By Senators Doak, Snyder and Mitchell)

PASSED April 13, 2001

In Effect 90 days from Passage
ENROLLED

Senate Bill No. 727

(By Senators Wooton, Snyder and Mitchell)

[Passed April 13, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact section twenty-one, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requirements of franchise agreements between brewers and distributors of nonintoxicating beer; and prohibiting brewers from requiring certain financial information of distributors.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, 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.

§11-16-21. 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.
(a) On and after the first day of July, 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 or malt cooler 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:

(1) 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, subject to the provisions of this article, the exclusive right to establish his or her selling prices, to select the brands of beer he or she 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.

(2) 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 subdivision (2), subsection (b) 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 brewpub or distributor, or any officer, agent or representative of any brewer or brewpub 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 section twenty-one of this article;

(2) For any brewer or brewpub or distributor, or any officer, agent or representative of any brewer or brewpub or distributor, to cancel, terminate or rescind without due regard for the equities of such brewer or brewpub 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 eleventh day of June, 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 the first day of July, one thousand nine hundred seventy-one. 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; or

(3) For any brewer to require a distributor to submit profit and loss statements, balance sheets or financial records as a requirement to retain its franchise.

(c) In the event a distributor desires to sell or transfer his or her franchise, such distributor shall give to the brewer or brewpub 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 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 brewpub shall be given sixty days to approve or disapprove of such sale or transfer. If the brewer or brewpub 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. In the event the brewer or brewpub shall disapprove of the sale or transfer to the prospective franchisee, transferee or purchaser, such brewer or brewpub 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 brewpub. 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 brewpub. Nor may the brewer or brewpub impose re- requirments upon the prospective franchisee, transferee or purchaser which are more stringent or restrictive than those currently demanded of or imposed upon the brewer's
or brewpub's 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, brewpub, 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 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 brewpub 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 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 brewpub shall constitute grounds for the forfeiture of the bond furnished by such brewer or brewpub in accordance with the provisions of section twelve 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 brewpub and such distributor and, in granting an injunction to a distributor, the court shall provide that the brewer or brewpub 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.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 2nd Day of May, 2001.

Governor