

FILED

2001 MAY -2 P 11: 44

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

ENROLLED

SENATE BILL NO. 727

(By Senators Wootton, Snyder and Mitchell)

PASSED April 13, 2001

In Effect 90 days from **Passage**

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(BY SENATORS WOOTON, SNYDER AND MITCHELL)

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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, articles 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.

1 (a) On and after the first day of July, one thousand nine
2 hundred seventy-one, it shall be unlawful for any brewer
3 to transfer or deliver to a distributor any nonintoxicating
4 beer, ale or other malt beverage or malt cooler without
5 first having entered into an equitable franchise agreement
6 with such distributor, which franchise agreement shall be
7 in writing, shall be identical as to terms and conditions
8 with all other franchise agreements between such brewer
9 and its other distributors in this state and which shall
10 contain a provision in substance or effect as follows:

11 (1) 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 subject to the provisions of this article, the exclusive right
15 to establish his or her selling prices, to select the brands of
16 beer he or she wishes to handle and to determine the
17 efforts and resources which the distributor will exert to
18 develop and promote the sale of the brewer's products
19 handled by the distributor. However, since the brewer
20 does not expect that its products handled by the distribu-
21 tor will be sold by others in the territory assigned to the
22 distributor, the brewer is dependent upon the distributor
23 alone for the sale of such products in said territory.
24 Consequently, the brewer expects that the distributor will
25 price competitively the products handled by the distribu-
26 tor, devote reasonable effort and resources to the sale of
27 such products and maintain a satisfactory sales level.

28 (2) Whenever the manufacturing, bottling or other
29 production rights for the sale of nonintoxicating beer at
30 wholesale of any brewer is acquired by another brewer,
31 the franchised distributor of the selling brewer shall be
32 entitled to continue distributing the selling brewer's beer
33 products as authorized in the distributor's existing fran-
34 chise agreement and the acquiring brewer shall market all
35 the selling brewer's beer products through said franchised
36 distributor as though the acquiring brewer had made the
37 franchise agreement and the acquiring brewer may

38 terminate said franchise agreement only in accordance
39 with subdivision (2), subsection (b) of this section: *Pro-*
40 *vided*, That the acquiring brewer may distribute any of its
41 other beer products through its duly authorized franchises
42 in accordance with all other provisions of this section.

43 (b) It shall also be unlawful:

44 (1) For any brewer or brewpub or distributor, or any
45 officer, agent or representative of any brewer or brewpub
46 or distributor, to coerce or persuade or attempt to coerce
47 or persuade any person licensed to sell, distribute or job
48 nonintoxicating beer, ale or other malt beverage or malt
49 cooler at wholesale or retail, to enter into any contracts or
50 agreements, whether written or oral, or to take any other
51 action which will violate or tend to violate any provision
52 of this article or any of the rules, regulations, standards,
53 requirements or orders of the commissioner promulgated
54 as provided in section twenty-one of this article;

55 (2) For any brewer or brewpub or distributor, or any
56 officer, agent or representative of any brewer or brewpub
57 or distributor, to cancel, terminate or rescind without due
58 regard for the equities of such brewer or brewpub or
59 distributor and without just cause, any franchise agree-
60 ment, whether oral or written, and in the case of an oral
61 franchise agreement, whether the same was entered into
62 on or before the eleventh day of June, one thousand nine
63 hundred seventy-one, and in the case of a franchise
64 agreement in writing, whether the same was entered into
65 on, before or subsequent to the first day of July, one
66 thousand nine hundred seventy-one. The cancellation,
67 termination or rescission of any such franchise agreement
68 shall not become effective for at least ninety days after
69 written notice of such cancellation, termination or rescis-
70 sion has been served on the affected party and the commis-
71 sioner by certified mail, return receipt requested: *Pro-*
72 *vided*, That said ninety-day period and said notice of
73 cancellation, termination or rescission shall not apply if

74 such cancellation, termination or rescission is agreed to in
75 writing by both the brewer and the distributor involved; or

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

79 (c) In the event a distributor desires to sell or transfer
80 his or her franchise, such distributor shall give to the
81 brewer or brewpub at least sixty days' notice in writing of
82 such impending sale or transfer and the identity of the
83 person, firm or corporation to whom such sale or transfer
84 is to be made and such other information as the brewer
85 may reasonably request. Such notice shall be made upon
86 forms and contain such additional information as the
87 commissioner by rule or regulation shall prescribe. A copy
88 of such notice shall be forwarded to the commissioner.
89 The brewer or brewpub shall be given sixty days to
90 approve or disapprove of such sale or transfer. If the
91 brewer or brewpub neither approves nor disapproves
92 thereof within sixty days of the date of receipt of such
93 notice, the sale or transfer of such franchise shall be
94 deemed to be approved by such brewer. In the event the
95 brewer or brewpub shall disapprove of the sale or transfer
96 to the prospective franchisee, transferee or purchaser, such
97 brewer or brewpub shall give notice to the distributor of
98 that fact in writing, setting forth the reason or reasons for
99 such disapproval. The approval shall not be unreasonably
100 withheld by the brewer or brewpub. The fact that the
101 prospective franchisee, transferee or purchaser has not had
102 prior experience in the nonintoxicating beer business or
103 beer business shall not be deemed sufficient reason in and
104 of itself for a valid disapproval of the proposed sale or
105 transfer, but may be considered in conjunction with other
106 adverse factors in supporting the position of the brewer or
107 brewpub. Nor may the brewer or brewpub impose re-
108 quirements upon the prospective franchisee, transferee or
109 purchaser which are more stringent or restrictive than
110 those currently demanded of or imposed upon the brewer's

111 or brewpub's or other distributors in the state of West
112 Virginia. A copy of such notice of disapproval shall
113 likewise be forwarded to the commissioner and to the
114 prospective franchisee, transferee or purchaser. In the
115 event the issue be not resolved within twenty days from
116 the date of such disapproval, either the brewer, brewpub,
117 distributor or prospective franchisee, transferee or pur-
118 chaser shall notify the other parties of his or her demand
119 for arbitration and shall likewise notify the commissioner
120 thereof. A dispute or disagreement shall thereupon be
121 submitted to arbitration in the county in which the distrib-
122 utor's principal place of business is located by a board of
123 three arbitrators, which request for arbitration shall name
124 one arbitrator. The party receiving such notice shall
125 within ten days thereafter by notice to the party demand-
126 ing arbitration name the second arbitrator or, failing to do
127 so, the second arbitrator shall be appointed by the chief
128 judge of the circuit court of the county in which the
129 distributor's principal place of business is located on
130 request of the party requesting arbitration in the first
131 instance. The two arbitrators so appointed shall name the
132 third or, failing to do so within ten days after appointment
133 of the second arbitrator, the third arbitrator may be
134 appointed by said chief judge upon request of either party.
135 The arbitrators so appointed shall promptly hear and
136 determine and the questions submitted pursuant to the
137 procedures established by the American arbitration
138 association and shall render their decision with all reason-
139 able speed and dispatch but in no event later than twenty
140 days after the conclusion of evidence. Said decision shall
141 include findings of fact and conclusions of law and shall
142 be based upon the justice and equity of the matter. Each
143 party shall be given notice of such decision. If the decision
144 of the arbitrators be in favor of or in approval of the
145 proposed sale or transfer, the brewer or brewpub shall
146 forthwith agree to the same and shall immediately transfer
147 the franchise to the proposed franchisee, transferee or
148 purchaser unless notice of intent to appeal such decision is

149 given the arbitrators and all other parties within ten days
150 of notification of such decision. If any such party deems
151 himself aggrieved thereby, such party shall have a right to
152 bring an appropriate action in circuit court. Any and all
153 notices given pursuant to this subsection shall be given to
154 all parties by certified or registered mail, return receipt
155 requested.

156 (d) The violation of any provision of this section by any
157 brewer or brewpub shall constitute grounds for the
158 forfeiture of the bond furnished by such brewer or
159 brewpub in accordance with the provisions of section
160 twelve of this article. Moreover, any circuit court of the
161 county in which a distributor's principal place of business
162 is located shall have the jurisdiction and power to enjoin
163 the cancellation, termination or rescission of any franchise
164 agreement between a brewer or brewpub and such distrib-
165 utor and, in granting an injunction to a distributor, the
166 court shall provide that the brewer or brewpub so enjoined
167 shall not supply the customers or territory of the distribu-
168 tor while the injunction is in effect.

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

Carol Anne
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Barrett E. Clark
.....
Clerk of the Senate

Gregory S. Gray
.....
Clerk of the House of Delegates

Carl Roy Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

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

Bill West
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

4/30/01

Time

9:35 am