WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

ENROLLED

House Bill No. 2478

(By Mr. Speaker, Mr. Kiss, and Delegates Craig, Amores, Kominar and Varner)

Passed March 21, 2005

In Effect Ninety Days from Passage
AN ACT to amend and reenact §11-16-21 of the Code of West Virginia, 1931, as amended, relating to removing the prohibition against brewers of nonintoxicating beer requiring distributors to submit certain financial documents.

Be it enacted by the Legislature of West Virginia:

That §11-16-21 of the Code of West Virginia, 1931, 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 or her 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. Conse-
quently, 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 produc-
tion 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 accor-
dance 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 this section;

(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

(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 requirements 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, transferees or purchaser shall notify the other parties of his or her
demand for arbitration and shall likewise notify the Commission 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 and 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 or herself 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the ___ day of ___, 2005.

Governor
PRESENTED TO THE
GOVERNOR

Date 3/28/65
Time 3:45 pm