

HB1080/813395/1

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL 1080

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “limiting” in line 4 down through “franchisor;” in line 5; in line 6, strike “small” and substitute “certain”; strike beginning with “establishing” in line 7 down through “from” in line 9 and substitute “exempting certain franchisors from a prohibition against”; in line 11, strike “small” and substitute “certain”; in the same line, strike “buy back certain beer at a certain price from” and substitute “pay a certain amount in a certain manner to”; in line 12, after “circumstances;” insert “providing for the submission of a certain matter to arbitration and for its application and enforcement in a certain manner; requiring certain support for certain products to continue in a certain manner;”; in line 13, after “terms;” insert “providing that existing obligations or contract rights may not be impaired by this Act; providing for a delayed effective date;”; in line 17, after “5–108,” insert “and”; and in the same line, strike “, and 5–201”.

AMENDMENT NO. 2

On page 3, after line 3, insert:

“(E) “FAIR MARKET VALUE” MEANS THE PRICE AT WHICH AN ASSET WOULD CHANGE HANDS BETWEEN A WILLING SELLER AND A WILLING BUYER WHEN:

- (1) NEITHER IS ACTING UNDER ANY COMPULSION; AND**
- (2) BOTH HAVE KNOWLEDGE OF ALL OF THE RELEVANT FACTS.”;**

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in lines 4 and 8, strike “(e)” and “(f)”, respectively, and substitute “**(F)**” and “**(G)**”, respectively; strike in their entirety lines 11 through 16, inclusive; strike in their entirety lines 19 through 24, inclusive; and in line 28, strike “at least 180 days”.

On page 4, strike beginning with “before” in line 1 down through “**LARGE**” in line 2 and substitute “**IF A**”; in line 2, after “**FRANCHISOR**” insert “**INTENDS TO TERMINATE OR REFUSES TO RENEW A BEER FRANCHISE AGREEMENT, THE FRANCHISOR**”; in line 3, after “intent” insert “:

(I) AT LEAST 45 DAYS BEFORE THE TERMINATION OR REFUSAL TO RENEW TAKES EFFECT, FOR A FRANCHISOR THAT ANNUALLY PRODUCES 20,000 OR FEWER BARRELS OF BEER IN AGGREGATE, IN CONJUNCTION WITH ANY AFFILIATE; AND

(II) AT LEAST 180 DAYS BEFORE THE TERMINATION OR REFUSAL TO RENEW TAKES EFFECT, FOR ALL OTHER FRANCHISORS”;

and strike beginning with “**EXCEPT**” in line 4 down through “**(3)**” in line 8.

On page 4, in lines 11 and 13, in each instance, strike “**(B)(1)**” and substitute “**(B)(1)(II)**”; strike in their entirety lines 18 through 27, inclusive; in line 31, after “(1)” insert “**(I) THIS PARAGRAPH DOES NOT APPLY TO A FRANCHISOR THAT ANNUALLY PRODUCES 20,000 OR FEWER BARRELS OF BEER IN AGGREGATE, IN CONJUNCTION WITH ANY AFFILIATE.**

(II)”;

in lines 31 and 32, in each instance, strike the bracket; and in line 32, strike “**A LARGE FRANCHISOR**”.

AMENDMENT NO. 3

On page 5, strike in their entirety lines 4 through 8, inclusive, and substitute:

“(A) THIS SECTION APPLIES ONLY TO A FRANCHISOR THAT ANNUALLY PRODUCES 20,000 OR FEWER BARRELS OF BEER IN AGGREGATE, IN CONJUNCTION WITH ANY AFFILIATE.

(B) (1) SUBJECT TO § 5-107 OF THIS SUBTITLE, AND EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, BEFORE TERMINATION OF OR REFUSAL TO RENEW A BEER FRANCHISE AGREEMENT, A FRANCHISOR SHALL ENTER INTO A TERMINATION AGREEMENT WITH THE TERMINATED FRANCHISEE.

(2) THE TERMINATION AGREEMENT SHALL:

(I) COMPENSATE THE TERMINATED FRANCHISEE FOR THE FAIR MARKET VALUE OF THE TERMINATED FRANCHISE; AND

(II) PROVIDE FOR THE REPURCHASE OF ALL THE FRANCHISOR’S BEER AT AN AMOUNT EQUAL TO THE LAID-IN COST OF THE FRANCHISEE’S INVENTORY OF THE FRANCHISER’S PRODUCTS THAT ARE IN THE WAREHOUSE OR IN TRANSIT TO THE FRANCHISEE.

(C) (1) IF AN AGREEMENT ON THE COMPENSATION AUTHORIZED UNDER SUBSECTION (B)(2)(I) OF THIS SECTION IS NOT REACHED WITHIN 45 DAYS AFTER THE FRANCHISOR PROVIDES THE NOTICE REQUIRED BY § 5-107(B)(1)(I) OF THIS SUBTITLE, THE MATTER SHALL BE SUBMITTED TO BINDING ARBITRATION FOR THE PURPOSE OF DETERMINING THE COMPENSATION.

(2) THE BINDING ARBITRATION SHALL:

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(I) BE ADMINISTERED UNDER THE RULES OF THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION;

(II) TAKE PLACE IN THE STATE; AND

(III) BE HEARD BY ONE ARBITRATOR WHO SHALL BE APPOINTED IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES.

(3) DURING THE PERIOD OF ARBITRATION, THE BEER FRANCHISE AGREEMENT SHALL REMAIN IN EFFECT AND MAY TERMINATE ONLY ON THE DECISION OF THE ARBITRATOR.

(4) THE ARBITRATOR SHALL BE GOVERNED BY THE LAWS OF THE STATE, THE MARYLAND RULES, AND THE COMMERCIAL ARBITRATION RULES.

(5) IN DETERMINING THE FAIR MARKET VALUE OF THE TERMINATED FRANCHISE, THE ARBITRATOR:

(I) MAY CONSIDER ONLY THE PERIOD BEFORE THE FRANCHISOR PROVIDED THE NOTICE REQUIRED BY § 5-107(B)(1)(I) OF THIS SUBTITLE; AND

(II) MAY NOT CONSIDER ANY PERIOD FOLLOWING THE PROVIDING OF THAT NOTICE.

(6) THE RULING OF THE ARBITRATOR SHALL BE FINAL AND SUBJECT TO ENFORCEMENT IN THE COURTS OF THE STATE.

(7) THE COST OF THE ARBITRATION SHALL BE SHARED EQUALLY BY THE PARTIES.

(D) BY WRITTEN MUTUAL AGREEMENT, THE FRANCHISOR AND THE FRANCHISEE MAY DETERMINE ANOTHER METHOD OF TERMINATING THE FRANCHISE AGREEMENT AND PROVIDING COMPENSATION TO THE TERMINATED FRANCHISEE.

(E) UNTIL RESOLUTION REGARDING FAIR MARKET VALUE IS REACHED UNDER SUBSECTION (B) OR (C) OF THIS SECTION AND THE TERMINATED FRANCHISEE HAS RECEIVED PAYMENT IN ACCORDANCE WITH THE DETERMINATION OF FAIR MARKET VALUE:

(1) THE FRANCHISOR AND THE TERMINATED FRANCHISEE SHALL SUPPORT THE FRANCHISOR'S PRODUCTS TO AT LEAST THE SAME EXTENT THAT THE PRODUCTS HAD BEEN PREVIOUSLY SUPPORTED IMMEDIATELY BEFORE THE FRANCHISOR PROVIDED THE NOTICE REQUIRED BY § 5-107(B)(1)(I) OF THIS SUBTITLE; AND

(2) THE TERMINATED FRANCHISEE SHALL CONTINUE TO DISTRIBUTE THE PRODUCTS.”.

AMENDMENT NO. 4

On pages 5 through 7, strike in their entirety the lines beginning with line 17 on page 5 through line 2 on page 7, inclusive.

On page 7, in line 3, strike “small”; in the same line, after “franchisor” insert “that annually produces 20,000 or fewer barrels of beer in aggregate, in conjunction with any affiliate, and”; in line 4, after the second “a” insert “written”; strike beginning with “July” in line 4 down through “on” in line 7; in line 7, after “2020” insert “, the terms of”

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the agreement relating to compensation and repurchase of inventory shall continue in force and effect unless otherwise mutually agreed by the parties"; and after line 7, insert:

"SECTION 3. AND BE IT FURTHER ENACTED, That a presently existing obligation or contract right may not be impaired in any way by this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply to a beer franchise agreement in existence on or entered into on or after January 1, 2020."

in line 8, strike "3." and substitute "5."; strike beginning with the second comma in line 8 down through "Act," in line 9; and in line 9, strike "July 1, 2019" and substitute "January 1, 2020".