

SB0704/393497/1

BY: Economic Matters Committee

AMENDMENTS TO SENATE BILL 704
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 12, strike “buy back certain beer at a certain price from” and substitute “pay a certain amount in a certain manner to”; in line 13, 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 the same line, after “Act;” insert “making a technical change; defining certain terms; providing that existing obligations or contract rights may not be impaired by this Act; providing for a delayed effective date;”; and in line 17, after “Section” insert “5-101,”.

AMENDMENT NO. 2

On page 3, after line 28, insert:

“5-101.

(a) In this [section] SUBTITLE the following words have the meanings indicated.

(b) “Beer distributor” means a person that imports or causes to be imported into the State, or purchases or causes to be purchased in the State, beer for sale or resale to a retail dealer licensed under this article without regard to whether the business of the person is conducted under a beer franchise agreement or another form of agreement with a beer manufacturer.

(c) “Beer franchise agreement” means:

(Over)

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(1) a commercial relationship between a beer distributor and beer manufacturer that:

(i) is of a definite or indefinite duration; and

(ii) is not required to be in writing;

(2) a relationship in which a beer manufacturer grants a beer distributor the right to offer and sell the brands of beer offered by the beer manufacturer;

(3) a relationship in which a beer distributor, as an independent business, constitutes a component of a beer manufacturer's distribution system;

(4) a relationship in which a beer distributor's business is substantially associated with a beer manufacturer's brand, advertising, or another commercial symbol that designates the beer manufacturer;

(5) a relationship in which a beer distributor's business relies substantially on a beer manufacturer for the continued supply of beer; or

(6) a written or oral arrangement of definite or indefinite duration in which:

(i) a beer manufacturer grants to a beer distributor the right to use a trade name, trademark, service mark, or related characteristic; and

(ii) there is a community of interest in the marketing of goods or services at wholesale or retail, by lease, or by another method.

(d) "Beer manufacturer" means:

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(1) a brewer, fermenter, processor, bottler, or packager of beer located in or outside the State; or

(2) a person located in or outside the State that enters into a beer franchise agreement with a beer distributor doing business in the State.

(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.

[(e)] (F) “Franchisee” means:

(1) a beer distributor to whom a beer franchise agreement is granted or offered; or

(2) a beer distributor that is a party to a beer franchise agreement.

[(f)] (G) “Franchisor” means a beer manufacturer that:

(1) enters into a beer franchise agreement with a beer distributor; or

(2) is a party to a beer franchise agreement.

[(g)] (H) “Sales territory” means the area of sales responsibility designated by a beer franchise agreement for the brand or brands of beer of a beer manufacturer.”.

(Over)

On page 4 in line 16, and on page 5 in line 12, in each instance, strike “30,000” and substitute “20,000”.

On page 5, in line 21, after “(A)” insert “THIS SECTION APPLIES ONLY TO A FRANCHISOR THAT ANNUALLY PRODUCES 20,000 OR FEWER BARRELS OF BEER IN AGGREGATE, IN CONJUNCTION WITH ANY AFFILIATE.”; in line 22, before “SUBJECT” insert “(B)(1)”; in the same line, after “SUBTITLE,” insert “AND EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,”; in the same line, after the second “OF” insert “OR REFUSAL TO RENEW”; strike beginning with “BUY” in line 23 down through “INVENTORY” in line 25 and substitute “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:

(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";

and strike in their entirety lines 26 through 32, inclusive.

On page 7, in line 32, strike "30,000" and substitute "20,000"; in line 33, after the second "a" insert "written"; strike beginning with "July" in line 33 down through "on" in line 36; in line 36, after "2020" insert ", the terms of 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 36, insert:

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“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.”.

On page 8, in line 1, strike “3.” and substitute “5.”; strike beginning with the second comma in line 1 down through “Act,” in line 2; and in line 2, strike “July 1, 2019” and substitute “January 1, 2020”.