

SENATE BILL 704

A1

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CF 9lr1780

By: **Senators Feldman, Carter, Hershey, Hester, Hough, Reilly, Smith,
Washington, West, and Young**

Introduced and read first time: February 4, 2019

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Alcoholic Beverages – Beer Franchise Agreements – Notice of Nonrenewal or**
3 **Termination**

4 FOR the purpose of limiting the application of the time frame for nonrenewal or
5 termination of a beer franchise agreement to a large franchisor; specifying a certain
6 time frame within which a small franchisor is required to notify a franchisee of an
7 intention to terminate or refuse to renew a beer franchise agreement; establishing
8 certain other notice requirements for franchisees; specifying that only a large
9 franchisor is prohibited from terminating or refusing to continue or renew a beer
10 franchise agreement without good cause under certain circumstances; requiring a
11 small franchisor to buy back certain beer at a certain price from a certain franchisee
12 under certain circumstances; providing for the application of this Act; making a
13 technical change; defining certain terms; and generally relating to alcoholic
14 beverages.

15 BY repealing and reenacting, with amendments,
16 Article – Alcoholic Beverages
17 Section 5–101, 5–107, 5–108, 5–109, and 5–201
18 Annotated Code of Maryland
19 (2016 Volume and 2018 Supplement)

20 BY adding to
21 Article – Alcoholic Beverages
22 Section 5–109
23 Annotated Code of Maryland
24 (2016 Volume and 2018 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
26 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Alcoholic Beverages

1
2 5–101.

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

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

9 (c) “Beer franchise agreement” means:

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

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

13 (ii) is not required to be in writing;

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

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

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

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

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

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

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

29 (d) “Beer manufacturer” means:

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

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

3 (e) “Franchisee” means:

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

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

7 (f) “Franchisor” means a beer manufacturer that:

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

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

10 (g) **“LARGE FRANCHISOR” MEANS A BEER MANUFACTURER THAT, IN**
11 **CONJUNCTION WITH ANY AFFILIATE:**

12 **(1) ANNUALLY PRODUCES MORE THAN 300,000 BARRELS OF BEER IN**
13 **AGGREGATE; OR**

14 **(2) REPRESENTS MORE THAN 10% OF A FRANCHISEE’S TOTAL**
15 **ANNUAL SALES VOLUME.**

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

18 (I) **“SMALL FRANCHISOR” MEANS A BEER MANUFACTURER THAT, IN**
19 **CONJUNCTION WITH ANY AFFILIATE:**

20 **(1) ANNUALLY PRODUCES 300,000 OR FEWER BARRELS OF BEER IN**
21 **AGGREGATE; AND**

22 **(2) ACCOUNTS FOR 10% OR LESS OF A FRANCHISEE’S TOTAL ANNUAL**
23 **SALES VOLUME.**

24 5–107.

25 (a) This section does not apply to a temporary delivery agreement under §
26 2–209(c) of this article for a beer festival or a wine and beer festival.

27 (b) (1) Except as provided in subsection (d) of this section, at least 180 days
28 before a [beer manufacturer] **LARGE FRANCHISOR** intends to terminate or refuse to renew

1 a beer franchise agreement, the [beer manufacturer] **LARGE FRANCHISOR** shall notify the
2 franchisee in writing of its intent.

3 (2) **EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, AT**
4 **LEAST 15 DAYS BEFORE A SMALL FRANCHISOR INTENDS TO TERMINATE OR REFUSE**
5 **TO RENEW A BEER FRANCHISE AGREEMENT, THE SMALL FRANCHISOR SHALL**
6 **NOTIFY THE FRANCHISEE IN WRITING OF ITS INTENT.**

7 (3) The [notice] **NOTICES REQUIRED BY THIS SECTION** shall state all the
8 reasons for the intended termination or nonrenewal.

9 (c) (1) If a deficiency is claimed in the notice provided under subsection [(b)]
10 **(B)(1)** of this section, the franchisee has 180 days to rectify the deficiency.

11 (2) If the franchisee rectifies the deficiency within 180 days after the notice
12 **PROVIDED UNDER SUBSECTION (B)(1) OF THIS SECTION** is received, the intended
13 termination or nonrenewal of the beer franchise agreement is void.

14 (d) The notice requirement of subsection (b) of this section does not apply if the
15 reason for the intended termination or nonrenewal is insolvency, the occurrence of an
16 assignment for the benefit of creditors, or bankruptcy.

17 (E) (1) **ON A DATE DESIGNATED BY A FRANCHISEE EVERY CALENDAR**
18 **YEAR, THE FRANCHISEE SHALL PROVIDE WRITTEN NOTICE TO A SMALL FRANCHISOR**
19 **OF THE PERCENTAGE OF THE TOTAL ANNUAL SALES VOLUME THAT THE SMALL**
20 **FRANCHISOR ACCOUNTS FOR IN COMPARISON TO ALL OTHER FRANCHISORS THAT**
21 **THE FRANCHISEE IS IN AGREEMENT WITH AT THAT TIME.**

22 (2) **DURING THE COURSE OF THE CALENDAR YEAR, IF A CHANGE IN**
23 **THE PERCENTAGE OF TOTAL ANNUAL SALES VOLUME TRIGGERS A CHANGE IN**
24 **STATUS OF A SMALL FRANCHISOR OR A LARGE FRANCHISOR, A FRANCHISEE SHALL**
25 **PROVIDE WRITTEN NOTICE TO A SMALL FRANCHISOR OR A LARGE FRANCHISOR**
26 **ABOUT THE CHANGE IN STATUS.**

27 5-108.

28 (a) This section does not apply to a temporary delivery agreement under §
29 2-209(c) of this article for a beer festival or a wine and beer festival.

30 (b) (1) Notwithstanding the terms of a beer franchise agreement, [a
31 franchisor] **A LARGE FRANCHISOR** may not terminate or refuse to continue or renew a
32 beer franchise agreement, or cause a franchisee to resign from a beer franchise agreement,
33 without good cause.

34 (2) For purposes of paragraph (1) of this subsection, good cause includes

1 the revocation of a franchisee's license to do business in the State.

2 **5-109.**

3 (A) **THIS SECTION DOES NOT APPLY TO A LARGE FRANCHISOR.**

4 (B) **SUBJECT TO § 5-107 OF THIS SUBTITLE, BEFORE TERMINATION OF A**
5 **BEER FRANCHISE AGREEMENT, A SMALL FRANCHISOR SHALL BUY BACK AT FAIR**
6 **MARKET VALUE ALL THE BEER THAT THE FRANCHISEE PURCHASED FROM THE**
7 **SMALL FRANCHISOR AND RETAINS IN INVENTORY.**

8 ~~[5-109.]~~ **5-110.**

9 (a) (1) A beer distributor or franchisee may bring an action in a court of
10 general jurisdiction to recover damages against a beer manufacturer, franchisor, or
11 franchisee for violation of this subtitle.

12 (2) If appropriate, the beer distributor or franchisee is entitled to injunctive
13 relief.

14 (b) In an action for violation of this subtitle, the prevailing beer distributor or
15 franchisee is entitled to the costs of the action including reasonable attorney's fees.

16 **5-201.**

17 (a) (1) In this section the following words have the meanings indicated.

18 (2) "Agreement" means oral or written evidence between a beer
19 manufacturer and a beer wholesaler granting the beer wholesaler the right to offer and sell
20 the brands of beer offered by the beer manufacturer.

21 (3) (I) "Beer manufacturer" means:

22 [(i)] 1. a [brewer] **LARGE FRANCHISOR AS DEFINED IN §**
23 **5-101 OF THIS TITLE**, fermenter, processor, bottler, or packager of beer located in or
24 outside the State; or

25 [(ii)] 2. a person located in or outside the State that enters into an
26 agreement with a beer wholesaler doing business in the State.

27 (II) **"BEER MANUFACTURER" DOES NOT INCLUDE A SMALL**
28 **FRANCHISOR AS DEFINED IN § 5-101 OF THIS TITLE.**

29 (4) "Fair market value" means the price at which an asset would change
30 hands between a willing seller and a willing buyer when neither is acting under any
31 compulsion and when both have knowledge of all of the relevant facts.

1 (5) “Successor beer manufacturer” includes a person or license holder who
2 replaces a beer manufacturer with the right to sell, distribute, or import a brand of beer.

3 (b) Except for the discontinuance of a brand of beer or for good cause shown as
4 provided under § 5–108 of this title, a successor beer manufacturer that continues in the
5 business is obligated under all the terms and conditions of the agreement made between
6 the previous beer manufacturer and the existing beer wholesaler that were in effect on the
7 date of change of beer manufacturers.

8 (c) A successor beer manufacturer that terminates any agreement provision
9 required to be continued under subsection (b) of this section shall remunerate the beer
10 wholesaler a sum equal to the fair market value for the sale of the subject brand or brands
11 of beer calculated from the date of termination.

12 (d) (1) Before a successor beer manufacturer may terminate any agreement
13 provision required to be continued under subsection (b) of this section and designate
14 another beer wholesaler to replace the existing beer wholesaler, the successor beer
15 manufacturer shall give notice of termination to the beer wholesaler to be replaced.

16 (2) On receipt of the notice, the beer wholesaler to be replaced and the
17 designated beer wholesaler shall negotiate in good faith to determine the fair market value
18 of the affected distribution rights.

19 (3) If an agreement is reached, the designated beer wholesaler promptly
20 shall pay the fair market value as compensation to the beer wholesaler to be replaced.

21 (4) If an agreement is not reached within 30 days after the beer wholesaler
22 to be replaced receives notice, the designated beer wholesaler and the beer wholesaler to be
23 replaced shall enter into nonbinding mediation with a mediator in the State who practices
24 in accordance with Title 17 of the Maryland Rules.

25 (5) If an agreement is not reached within 45 days after mediation begins,
26 the beer wholesaler to be replaced shall within 90 days bring an action in a court of general
27 jurisdiction against a successor beer manufacturer to determine and award fair market
28 value of the terminated brand or brands.

29 (e) Until resolution regarding fair market value is reached under subsection (d)
30 of this section and the beer wholesaler to be replaced has received payment in accordance
31 with the determination of fair market value:

32 (1) the beer wholesaler to be replaced and the successor beer manufacturer
33 shall support the brand to at least the same extent that the brand had been previously
34 supported immediately before the successor beer manufacturer acquired rights to the
35 brand; and

36 (2) the beer wholesaler to be replaced shall continue to distribute the

1 brand.

2 SECTION 2. AND BE IT FURTHER ENACTED, That for a small franchisor that is
3 a party to a franchise agreement existing before July 1, 2019:

4 (1) the law in effect on June 30, 2019, continues to apply until expiring on
5 December 31, 2019; and

6 (2) this Act shall apply beginning on January 1, 2020.

7 SECTION 3. AND BE IT FURTHER ENACTED, That, subject to Section 2 of this
8 Act, this Act shall take effect July 1, 2019.