

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 704

(Senator Feldman, *et al.*)

Education, Health, and Environmental Affairs

Economic Matters

Alcoholic Beverages - Beer Franchise Agreements - Notice of Nonrenewal or Termination

This bill reduces, from 180 days to 45 days, the number of days that a brewery must wait after notifying a distributor of its intent to terminate or refuse to renew a beer franchise agreement before terminating the agreement, if the brewery produces 20,000 or fewer barrels of beer per year. Such a brewery is authorized to terminate or refuse to continue or renew a franchise agreement without good cause and is no longer required to give its franchisee an opportunity to correct a deficiency if that is the reason the agreement is being terminated. The bill requires a termination agreement and arbitration, as specified. **The bill takes effect January 1, 2020. For a brewery that produces 20,000 barrels of beer or less each year and that is party to a franchise agreement existing before January 1, 2020, the terms of the agreement relating to compensation and repurchasing of inventory must continue unless otherwise mutually agreed by the parties.**

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: Before a brewery that produces 20,000 or fewer barrels of beer per year terminates or refuses to renew its beer franchise agreement, it must enter into a termination

agreement with the terminated franchisee. The agreement must compensate the terminated franchisee for the fair market value of the terminated franchise and require the brewery to repurchase its beer in a specified manner.

If an agreement on the compensation is not reached within 45 days after the brewery notifies the franchisee, the matter must be submitted to binding arbitration. During this period, the beer franchise agreement must remain in effect and may terminate only on the decision of the arbitrator; other procedures for the arbitration process are established. The ruling of the arbitrator is final and subject to enforcement in the courts of the State and the cost of arbitration must be shared equally by the involved parties. By written mutual agreement, the brewery and franchisee may determine another method of terminating the franchise agreement and providing compensation to the terminated franchisee.

Until any resolution is reached and the terminated franchisee has received payment, the franchisee must continue to support and distribute the brewery's products, as specified.

“Fair market value” means the price at which an asset would change hands between a willing seller and a willing buyer when neither is acting under any compulsion and both have knowledge of all of the relevant facts.

Current Law: Established in 1974, the Beer Franchise Fair Dealing Act regulates the agreements, franchises, and relationships between beer manufactures and their distributors (wholesalers). Among other things, the act prohibits a brewery from terminating a contract with a distributor without good cause.

Additionally, if a brewery wishes to terminate or refuse to renew a franchise agreement with one of its distributors, the brewery must provide the distributor with notice at least 180 days before terminating or refusing to renew the contract. The notice must state all the reasons for the intended termination or nonrenewal. If deficiency is claimed as the reason for the termination or nonrenewal, the distributor has 180 days after the notice is received to rectify the deficiency. If the distributor rectifies the deficiency within this time period, the brewery may not terminate or refuse to renew the contract with the distributor.

Background: Alcoholic beverages in the State are regulated through a three-tier distribution system. The system separates ownership and operations among (1) manufacturers; (2) wholesalers; and (3) retailers. The system authorizes manufacturers (tier one) to sell only to wholesalers (tier two); wholesalers only to retailers (tier three); and retailers only to consumers; however, there are some statutory exceptions. For example, certain breweries are authorized to distribute up to 3,000 barrels of their own beer if they obtain a Class 7 limited beer wholesaler's license and meet other specified requirements. Generally in Maryland, the Comptroller issues statewide licenses to

manufacturers and wholesalers, while each licensing jurisdiction issues licenses to retailers to operate within its boundaries.

In February 2019, there were (1) 48 Class 5 breweries; (2) 1 Class 6 pub-brewery; (3) 36 Class 7 micro-breweries; and (4) 20 Class 8 farm breweries. During that same month, 77 of these breweries had Class 7 limited beer wholesaler's licenses.

Additional Information

Prior Introductions: SB 1043 of 2018, a similar bill, received a hearing in the Senate Finance Committee, but no further action was taken. Its cross file, HB 1222, received a hearing in the House Economic Matters Committee, but no further action was taken.

Cross File: HB 1080 (Delegate Krimm, *et al.*) - Economic Matters.

Information Source(s): Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2019
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