

SENATE BILL 118

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CF 8lr1339

By: **Senator Conway**

Introduced and read first time: January 17, 2008

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Alcoholic Beverages – Beer Manufacturer and Distributor Agreements –**
3 **Obligation of Successor Manufacturer**

4 FOR the purpose of requiring a successor beer manufacturer who violates a certain
5 agreement with a beer distributor to remunerate the beer distributor a sum
6 equal to the fair market value calculated from the date of the violation for the
7 sale of the beer; specifying that a beer distributor or franchisee may bring a
8 certain action against a successor beer manufacturer under certain
9 circumstances to obtain certain remedies; repealing a defined term; defining a
10 certain term; and generally relating to beer manufacturer and distributor
11 agreements.

12 BY repealing and reenacting, with amendments,
13 Article 2B – Alcoholic Beverages
14 Section 21–103
15 Annotated Code of Maryland
16 (2005 Replacement Volume and 2007 Supplement)

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

19 **Article 2B – Alcoholic Beverages**

20 21–103.

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

22 (2) “Agreement” means oral or written evidence between a beer
23 manufacturer and beer distributor where the distributor is granted the right to offer
24 and sell the brands of beer offered by the beer manufacturer.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (3) "Beer manufacturer" means every brewer, fermenter, processor,
2 bottler or packager of beer located within or without the State of Maryland, or any
3 other person whether located within or without the State of Maryland who enters into
4 an "agreement" with any beer distributor doing business in the State of Maryland.

5 (4) ["Gross profit" means:

6 (i) The beer distributor's selling price of the subject brand of
7 beer; less

8 (ii) The FOB cost and the transportation cost of the brand to the
9 beer distributor] **"FAIR MARKET VALUE" MEANS THE PRICE AT WHICH AN ASSET
10 WOULD CHANGE HANDS BETWEEN A WILLING SELLER AND A WILLING BUYER
11 WHEN NEITHER IS ACTING UNDER ANY COMPULSION AND WHEN BOTH HAVE
12 KNOWLEDGE OF ALL OF THE RELEVANT FACTS.**

13 (5) "Successor beer manufacturer" includes a person or licensee who
14 replaces a beer manufacturer with the right to sell, distribute, or import a brand of
15 beer.

16 (b) Except for the discontinuance of a brand of beer or for good cause shown
17 as provided under § 17-103 of this article, a successor beer manufacturer that
18 continues in the business is obligated under the agreement that was made between
19 the previous beer manufacturer and the surviving beer distributor under all the terms
20 and conditions of that agreement that were in effect on the date of change of beer
21 manufacturers.

22 (c) A successor beer manufacturer who violates any of the agreement
23 provisions required to be continued under subsection (b) of this section shall
24 remunerate the beer distributor a sum equal to the [total of the gross profit] **FAIR
25 MARKET VALUE** for the sale of the subject brand or brands of beer [for 2 years prior]
26 calculated from the date of violation.

27 **(D) A BEER DISTRIBUTOR OR FRANCHISEE MAY BRING AN ACTION IN A
28 COURT OF GENERAL JURISDICTION IN THE STATE AGAINST A SUCCESSOR
29 MANUFACTURER FOR A VIOLATION OF THIS SECTION TO OBTAIN:**

30 **(1) DAMAGES SUSTAINED BY THE VIOLATION;**

31 **(2) INJUNCTIVE RELIEF; AND**

32 **(3) THE COSTS OF THE ACTION, INCLUDING REASONABLE
33 ATTORNEYS' FEES.**

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 July 1, 2008.