

SENATE BILL 118

A1

8lr1338
CF HB 205

By: **Senator Conway**

Introduced and read first time: January 17, 2008

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 20, 2008

CHAPTER _____

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~~ terminates a
5 certain agreement with a beer distributor to remunerate the beer distributor a
6 sum equal to the fair market value calculated from the date of the ~~violation~~
7 termination for the sale of the beer; ~~specifying that a beer distributor or~~
8 ~~franchisee may bring a certain action against a successor beer manufacturer~~
9 ~~under certain circumstances to obtain certain remedies;~~ requiring a successor
10 beer manufacturer to give certain notice to a surviving beer distributor before
11 termination of certain agreements; requiring certain negotiations, certain
12 payments, and certain mediation under certain circumstances; requiring a
13 surviving beer distributor to bring a certain action within a certain period of
14 time against a successor beer manufacturer to determine and recover certain
15 value; requiring certain surviving beer distributors and successor beer
16 manufacturers to support and distribute certain brands under certain
17 circumstances; repealing a defined term; defining a certain term; and generally
18 relating to beer manufacturer and distributor agreements.

19 BY repealing and reenacting, with amendments,
20 Article 2B – Alcoholic Beverages
21 Section 21–103
22 Annotated Code of Maryland
23 (2005 Replacement Volume and 2007 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

3 **Article 2B – Alcoholic Beverages**

4 21–103.

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

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

9 (3) “Beer manufacturer” means every brewer, fermenter, processor,
10 bottler or packager of beer located within or without the State of Maryland, or any
11 other person whether located within or without the State of Maryland who enters into
12 an “agreement” with any beer distributor doing business in the State of Maryland.

13 (4) [“Gross profit” means:

14 (i) The beer distributor’s selling price of the subject brand of
15 beer; less

16 (ii) The FOB cost and the transportation cost of the brand to the
17 beer distributor] **“FAIR MARKET VALUE” MEANS THE PRICE AT WHICH AN ASSET**
18 **WOULD CHANGE HANDS BETWEEN A WILLING SELLER AND A WILLING BUYER**
19 **WHEN NEITHER IS ACTING UNDER ANY COMPULSION AND WHEN BOTH HAVE**
20 **KNOWLEDGE OF ALL OF THE RELEVANT FACTS.**

21 (5) “Successor beer manufacturer” includes a person or licensee who
22 replaces a beer manufacturer with the right to sell, distribute, or import a brand of
23 beer.

24 (b) Except for the discontinuance of a brand of beer or for good cause shown
25 as provided under § 17–103 of this article, a successor beer manufacturer that
26 continues in the business is obligated under the agreement that was made between
27 the previous beer manufacturer and the surviving beer distributor under all the terms
28 and conditions of that agreement that were in effect on the date of change of beer
29 manufacturers.

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

1 (D) (1) BEFORE A SUCCESSOR BEER MANUFACTURER MAY
2 TERMINATE ANY OF THE AGREEMENT PROVISIONS REQUIRED TO BE CONTINUED
3 UNDER SUBSECTION (B) OF THIS SECTION AND DESIGNATE ANOTHER BEER
4 DISTRIBUTOR, THE SUCCESSOR BEER MANUFACTURER SHALL GIVE NOTICE OF
5 TERMINATION TO THE SURVIVING BEER DISTRIBUTOR.

6 (2) ON RECEIPT OF THE NOTICE, THE SURVIVING BEER
7 DISTRIBUTOR AND THE DESIGNATED BEER DISTRIBUTOR SHALL NEGOTIATE IN
8 GOOD FAITH TO DETERMINE THE FAIR MARKET VALUE OF THE AFFECTED
9 DISTRIBUTION RIGHTS.

10 (3) IF AN AGREEMENT IS REACHED, THE DESIGNATED BEER
11 DISTRIBUTOR SHALL PROMPTLY PAY THE FAIR MARKET VALUE AS
12 COMPENSATION TO THE SURVIVING BEER DISTRIBUTOR.

13 (4) IF AN AGREEMENT IS NOT REACHED WITHIN 30 DAYS AFTER
14 THE SURVIVING BEER DISTRIBUTOR RECEIVES NOTICE, THE DESIGNATED BEER
15 DISTRIBUTOR AND THE SURVIVING BEER DISTRIBUTOR SHALL ENTER INTO
16 NONBINDING MEDIATION WITH A MARYLAND MEDIATOR WHO PRACTICES IN
17 ACCORDANCE WITH TITLE 17 OF THE MARYLAND RULES.

18 ~~(D)~~ A (5) IF AN AGREEMENT IS NOT REACHED WITHIN 45 DAYS AFTER
19 MEDIATION BEGINS, THE SURVIVING BEER DISTRIBUTOR OR FRANCHISEE MAY
20 SHALL BRING AN ACTION WITHIN 90 DAYS IN A COURT OF GENERAL
21 JURISDICTION IN THE STATE AGAINST A SUCCESSOR BEER MANUFACTURER
22 FOR A VIOLATION OF THIS SECTION TO OBTAIN:

23 ~~(1) DAMAGES SUSTAINED BY THE VIOLATION;~~

24 ~~(2) INJUNCTIVE RELIEF; AND~~

25 ~~(3) THE COSTS OF THE ACTION, INCLUDING REASONABLE~~
26 ATTORNEYS' FEES TO DETERMINE AND AWARD FAIR MARKET VALUE OF THE
27 TERMINATED BRAND OR BRANDS.

28 (E) UNTIL RESOLUTION REGARDING FAIR MARKET VALUE IS REACHED
29 UNDER SUBSECTION (D) OF THIS SECTION AND THE SURVIVING BEER
30 DISTRIBUTOR HAS RECEIVED PAYMENT IN ACCORDANCE WITH THE
31 DETERMINATION OF FAIR MARKET VALUE:

32 (1) THE SURVIVING BEER DISTRIBUTOR AND THE SUCCESSOR
33 BEER MANUFACTURER SHALL SUPPORT THE BRAND TO AT LEAST THE SAME
34 EXTENT THAT THE BRAND HAD BEEN PREVIOUSLY SUPPORTED IMMEDIATELY
35 BEFORE THE SUCCESSOR BEER MANUFACTURER ACQUIRED RIGHTS TO THE
36 BRAND; AND

1 **(2) THE SURVIVING BEER DISTRIBUTOR SHALL CONTINUE TO**
2 **DISTRIBUTE THE BRAND.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 ~~July~~ October 1, 2008.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.