

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 118

(Senator Conway)

Education, Health, and Environmental Affairs

Economic Matters

**Alcoholic Beverages - Beer Manufacturer and Distributor Agreements -
Obligation of Successor Manufacturer**

This bill provides that a “successor beer manufacturer” who terminates an agreement with a surviving beer distributor under the terms that were in effect on the date of change of beer manufacturers, must remunerate to the beer distributor a sum equal to the fair market value for the sale of the subject brand or brands of beer calculated from the date of termination.

A successor beer manufacturer is required to give notice of intent to terminate an agreement with a surviving beer distributor and upon receipt of notice the two parties must negotiate in good faith to determine the fair market value of the affected distribution rights. If an agreement is not reached within 30 days the surviving beer manufacturer and distributor must enter nonbinding mediation. If an agreement is not reached within 45 days after mediation begins, the surviving beer distributor has 90 days to bring a court action to determine the fair market value. Until resolution has been reached, both parties must provide the same level of support to the brand as was provided prior to the dispute.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to an increase of cases contested in court. Revenues would not be affected.

Local Effect: None.

Small Business Effect: Potential meaningful impact on a business deemed a successor manufacturer or a surviving beer distributor.

Analysis

Current Law: A successor beer manufacturer is defined as a person or licensee who replaces a beer manufacturer with the right to sell, distribute, or import a brand of beer. Except for discontinuance of a brand of beer or for good cause, a successor beer manufacturer that continues business is obligated to fulfill a distribution agreement with the surviving beer distributor. Good cause shall exist if a franchisee's license to do business in the State is revoked.

A successor beer manufacturer who violates this term of agreement must pay the beer distributor a sum equal to the total of the gross profit for the sale of the subject brand or brands of beer for two years prior, calculated from the date of violation.

Background: According to the Comptroller's *Alcohol & Tobacco Tax Report* for fiscal year 2007, Maryland brewers sold 1.35 million gallons of beer in fiscal 2007. Of this amount, 43% was sold to wholesalers, 32% was sold at the brewery, and 25% was sold out of state. There are currently four licensed Class 5 breweries, one licensed Class 6 pub-brewery, and 13 Class 7 microbreweries in the State.

Alcoholic beverages laws in many states specify the obligations of a successor manufacturer. Due to merger activity of alcoholic beverages manufacturers, other states have taken legislative action regarding contracts between a successor manufacturer and wholesaler.

In October 2007, California enacted legislation that requires a successor manufacturer to notify a distributor of its intention to cancel the distribution rights. Within 30 days of the notice the parties must negotiate in good faith to determine the fair market value of the distribution rights. If the parties are unable to agree, arbitration will be used to determine the fair market value of the distribution rights to be transferred.

In March 2007, Colorado enacted legislation that allows a successor manufacturer to terminate an agreement with a wholesaler. The wholesaler must negotiate a fair market value for the distribution rights with a successor wholesaler. If an agreement cannot be made, arbitration may be sought to determine the fair market value.

Additional Information

Prior Introductions: None.

Cross File: HB 205 is identified as a cross file but the bills are not identical.

Information Source(s): Carroll County, Harford County, Montgomery County, Prince George's County, Queen Anne's County, St. Mary's County, Comptroller's Office, Department of Legislative Services

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