

SENATE BILL 1043

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8lr2184
CF 8lr1854

By: **Senators Kagan and Reilly**

Introduced and read first time: February 5, 2018

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 altering the policy of the State regarding beer franchise agreements;
5 limiting the application of the time frame for nonrenewal or termination of a beer
6 franchise agreement to a large franchisor that manufactures more than a certain
7 number of barrels of beer each year; establishing a requirement regarding the
8 nonrenewal or termination of a beer franchise agreement for a small franchisor that
9 manufactures a certain number of barrels of beer or less each year; authorizing a
10 small franchisor to rectify a certain deficiency within a certain period of time in order
11 to void an intended termination or nonrenewal of a beer franchise agreement;
12 specifying that only a large franchisor is prohibited from terminating or refusing to
13 continue or renew a beer franchise agreement except under certain circumstances;
14 defining certain terms; and generally relating to beer franchise agreements.

15 BY repealing and reenacting, with amendments,
16 Article – Alcoholic Beverages
17 Section 5–101, 5–103, 5–107, and 5–108
18 Annotated Code of Maryland
19 (2016 Volume and 2017 Supplement)

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

22 **Article – Alcoholic Beverages**

23 5–101.

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

25 (b) “Beer distributor” means a person that imports or causes to be imported into

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 the State, or purchases or causes to be purchased in the State, beer for sale or resale to a
2 retail dealer licensed under this article without regard to whether the business of the
3 person is conducted under a beer franchise agreement or another form of agreement with
4 a beer manufacturer.

5 (c) "Beer franchise agreement" means:

6 (1) a commercial relationship between a beer distributor and beer
7 manufacturer that:

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

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

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

12 (3) a relationship in which a beer distributor, as an independent business,
13 constitutes a component of a beer manufacturer's distribution system;

14 (4) a relationship in which a beer distributor's business is substantially
15 associated with a beer manufacturer's brand, advertising, or another commercial symbol
16 that designates the beer manufacturer;

17 (5) a relationship in which a beer distributor's business relies substantially
18 on a beer manufacturer for the continued supply of beer; or

19 (6) a written or oral arrangement of definite or indefinite duration in
20 which:

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

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

25 (d) "Beer manufacturer" means:

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

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

30 (e) "Franchisee" means:

31 (1) a beer distributor to whom a beer franchise agreement is granted or

1 offered; or

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

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

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

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

6 (g) **“LARGE FRANCHISOR” MEANS A BEER MANUFACTURER THAT, IN**
7 **CONJUNCTION WITH ANY AFFILIATE, ANNUALLY PRODUCES MORE THAN 300,000**
8 **BARRELS OF BEER IN AGGREGATE.**

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

11 (I) **“SMALL FRANCHISOR” MEANS A BEER MANUFACTURER THAT, IN**
12 **CONJUNCTION WITH ANY AFFILIATE, ANNUALLY PRODUCES 300,000 OR FEWER**
13 **BARRELS OF BEER IN AGGREGATE.**

14 5–103.

15 (a) It is the policy of the State that:

16 (1) it is necessary to regulate and control beer franchise agreements and
17 relationships between beer manufacturers and beer distributors:

18 (i) to foster and promote temperance in the consumption of beer;
19 and

20 (ii) to promote respect for and obedience to the laws that control the
21 distribution and sale of beer; and

22 (2) temperance and obedience to the laws that control the distribution and
23 ultimate sale of beer is promoted by legislation that encourages beer distributors to make
24 investments in their facilities to serve retail license holders by protecting them against the
25 termination of beer distributorships **BY BEER MANUFACTURERS**, or other acts described
26 in this subtitle, without good cause for the termination or other acts.

27 (b) It is necessary to accomplish this policy to eliminate the undue stimulation of
28 sales of beer in the State by beer manufacturers that induce or coerce, or attempt to induce
29 or coerce, beer distributors to act detrimentally to the orderly and lawful distribution of
30 beer by:

31 (1) threatened or actual termination of the beer manufacturer and beer

1 distributor relationship, directly or indirectly;

2 (2) the establishment of dual beer distributors of a brand or brands of beer
3 **BY A BEER MANUFACTURER** in a sales territory presently served by a beer distributor; or

4 (3) the sale of the same brand or brands of beer in one sales territory by
5 more than one franchisee.

6 (c) The General Assembly further recognizes the distinction between the nature
7 of the distribution of beer and other alcoholic beverages in that distributors of alcoholic
8 beverages other than beer are franchised by manufacturers to distribute many brands of
9 various kinds of alcoholic beverages and are not as vulnerable to the economic pressures of
10 the manufacturers as are beer distributors, which traditionally handle mainly one, two, or
11 three brands of beer in their distributorships.

12 5–107.

13 (a) This section does not apply to a temporary delivery agreement under
14 § 2–209(c) of this article for a beer festival or a wine and beer festival.

15 (b) (1) Except as provided in subsection ~~[(d)]~~(E) of this section, at least 180
16 days before a ~~[beer manufacturer]~~ **LARGE FRANCHISOR** intends to terminate or refuse to
17 renew a beer franchise agreement, the ~~[beer manufacturer]~~ **LARGE FRANCHISOR** shall
18 notify the franchisee in writing of its intent.

19 (2) The notice shall state all the reasons for the intended termination or
20 nonrenewal.

21 **(C) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, AT LEAST**
22 **15 DAYS BEFORE A SMALL FRANCHISOR INTENDS TO TERMINATE OR REFUSE TO**
23 **RENEW AN AGREEMENT, THE SMALL FRANCHISOR SHALL NOTIFY THE FRANCHISEE**
24 **IN WRITING OF ITS INTENT.**

25 ~~[(c)]~~ **(D)** (1) **(I)** If a deficiency is claimed in the notice provided under
26 subsection (b) of this section, the franchisee has 180 days to rectify the deficiency.

27 ~~[(2)]~~ **(II)** If the franchisee rectifies the deficiency within 180 days
28 after the notice is received, the intended termination or nonrenewal of the beer franchise
29 agreement is void.

30 **(2) (I) IF A DEFICIENCY IS CLAIMED IN THE NOTICE PROVIDED**
31 **UNDER SUBSECTION (C) OF THIS SECTION, THE FRANCHISEE HAS 15 DAYS TO**
32 **RECTIFY THE DEFICIENCY.**

33 **(II) IF THE FRANCHISEE RECTIFIES THE DEFICIENCY WITHIN 15**
34 **DAYS AFTER NOTICE IS RECEIVED, THE INTENDED TERMINATION OR NONRENEWAL**

1 **OF THE BEER FRANCHISE AGREEMENT IS VOID.**

2 [(d)] (E) The notice [requirement] **REQUIREMENTS** of [subsection]
3 **SUBSECTIONS (b) AND (C)** of this section [does] **DO** not apply if the reason for the intended
4 termination or nonrenewal is insolvency, the occurrence of an assignment for the benefit of
5 creditors, or bankruptcy.

6 5–108.

7 (a) This section does not apply to a temporary delivery agreement under
8 § 2–209(c) of this article for a beer festival or a wine and beer festival.

9 (b) (1) Notwithstanding the terms of a beer franchise agreement, a **LARGE**
10 franchisor may not terminate or refuse to continue or renew a beer franchise agreement, or
11 cause a franchisee to resign from a beer franchise agreement, without good cause.

12 (2) For purposes of paragraph (1) of this subsection, good cause includes
13 the revocation of a franchisee’s license to do business in the State.

14 **SECTION 2. AND BE IT FURTHER ENACTED,** That this Act shall take effect July
15 1, 2018.