

Chapter 379

(House Bill 1080)

AN ACT concerning

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

FOR the purpose of ~~limiting the application of the time frame for nonrenewal or termination of a beer franchise agreement to a large franchisor;~~ specifying a certain time frame within which a ~~small~~ certain franchisor is required to notify a franchisee of an intention to terminate or refuse to renew a beer franchise agreement; ~~establishing certain other notice requirements for franchisees; specifying that only a large franchisor is prohibited from~~ exempting certain franchisors from a prohibition against terminating or refusing to continue or renew a beer franchise agreement without good cause under certain circumstances; requiring a ~~small~~ certain franchisor to ~~buy back certain beer at a certain price from~~ pay a certain amount in a certain manner to a certain franchisee under certain circumstances; providing for the submission of a certain matter to arbitration and for its application and enforcement in a certain manner; requiring certain support for certain products to continue in a certain manner; providing for the application of this Act; making a technical change; defining certain terms; ~~providing that existing obligations or contract rights may not be impaired by this Act;~~ providing for a delayed effective date; and generally relating to alcoholic beverages.

BY repealing and reenacting, with amendments,

Article – Alcoholic Beverages

Section 5–101, 5–107, 5–108, and 5–109, ~~and 5–201~~

Annotated Code of Maryland

(2016 Volume and 2018 Supplement)

BY adding to

Article – Alcoholic Beverages

Section 5–109

Annotated Code of Maryland

(2016 Volume and 2018 Supplement)

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

Article – Alcoholic Beverages

5–101.

(a) In this [section] **SUBTITLE** the following words have the meanings indicated.

(b) “Beer distributor” means a person that imports or causes to be imported into the State, or purchases or causes to be purchased in the State, beer for sale or resale to a retail dealer licensed under this article without regard to whether the business of the person is conducted under a beer franchise agreement or another form of agreement with a beer manufacturer.

(c) “Beer franchise agreement” means:

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

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

(ii) is not required to be in writing;

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

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

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

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

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

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

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

(d) “Beer manufacturer” means:

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

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

(E) “FAIR MARKET VALUE” MEANS THE PRICE AT WHICH AN ASSET WOULD CHANGE HANDS BETWEEN A WILLING SELLER AND A WILLING BUYER WHEN:

(1) NEITHER IS ACTING UNDER ANY COMPULSION; AND

(2) BOTH HAVE KNOWLEDGE OF ALL OF THE RELEVANT FACTS.

~~(e)~~ **(F)** “Franchisee” means:

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

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

~~(f)~~ **(G)** “Franchisor” means a beer manufacturer that:

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

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

~~(g)~~ **“LARGE FRANCHISOR” MEANS A BEER MANUFACTURER THAT, IN CONJUNCTION WITH ANY AFFILIATE:**

~~**(1) ANNUALLY PRODUCES MORE THAN 300,000 BARRELS OF BEER IN AGGREGATE; OR**~~

~~**(2) REPRESENTS MORE THAN 10% OF A FRANCHISEE’S TOTAL ANNUAL SALES VOLUME.**~~

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

~~**(I) “SMALL FRANCHISOR” MEANS A BEER MANUFACTURER THAT, IN CONJUNCTION WITH ANY AFFILIATE:**~~

~~**(1) ANNUALLY PRODUCES 300,000 OR FEWER BARRELS OF BEER IN AGGREGATE; AND**~~

~~**(2) ACCOUNTS FOR 10% OR LESS OF A FRANCHISEE’S TOTAL ANNUAL SALES VOLUME.**~~

5-107.

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

(b) (1) Except as provided in subsection (d) of this section, ~~at least 180 days before a [beer manufacturer] LARGE FRANCHISOR intends to terminate or refuse to renew a beer franchise agreement, the [beer manufacturer] LARGE~~ IF A FRANCHISOR INTENDS TO TERMINATE OR REFUSES TO RENEW A BEER FRANCHISE AGREEMENT, THE FRANCHISOR shall notify the franchisee in writing of its intent:

(I) AT LEAST 45 DAYS BEFORE THE TERMINATION OR REFUSAL TO RENEW TAKES EFFECT, FOR A FRANCHISOR THAT ANNUALLY PRODUCES 20,000 OR FEWER BARRELS OF BEER IN AGGREGATE, IN CONJUNCTION WITH ANY AFFILIATE; AND

(II) AT LEAST 180 DAYS BEFORE THE TERMINATION OR REFUSAL TO RENEW TAKES EFFECT, FOR ALL OTHER FRANCHISORS.

~~(2) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, AT LEAST 15 DAYS BEFORE A SMALL FRANCHISOR INTENDS TO TERMINATE OR REFUSE TO RENEW A BEER FRANCHISE AGREEMENT, THE SMALL FRANCHISOR SHALL NOTIFY THE FRANCHISEE IN WRITING OF ITS INTENT.~~

~~(3)~~ The [notice] NOTICES REQUIRED BY THIS SECTION shall state all the reasons for the intended termination or nonrenewal.

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

(2) If the franchisee rectifies the deficiency within 180 days after the notice PROVIDED UNDER SUBSECTION ~~(B)(1)~~ (B)(1)(II) OF THIS SECTION is received, the intended termination or nonrenewal of the beer franchise agreement is void.

(d) The notice requirement of subsection (b) of this section does not apply if the reason for the intended termination or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

~~(E) (1) ON A DATE DESIGNATED BY A FRANCHISEE EVERY CALENDAR YEAR, THE FRANCHISEE SHALL PROVIDE WRITTEN NOTICE TO A SMALL FRANCHISOR OF THE PERCENTAGE OF THE TOTAL ANNUAL SALES VOLUME THAT THE SMALL FRANCHISOR ACCOUNTS FOR IN COMPARISON TO ALL OTHER FRANCHISORS THAT THE FRANCHISEE IS IN AGREEMENT WITH AT THAT TIME.~~

~~(2) DURING THE COURSE OF THE CALENDAR YEAR, IF A CHANGE IN THE PERCENTAGE OF TOTAL ANNUAL SALES VOLUME TRIGGERS A CHANGE IN STATUS OF A SMALL FRANCHISOR OR A LARGE FRANCHISOR, A FRANCHISEE SHALL~~

~~PROVIDE WRITTEN NOTICE TO A SMALL FRANCHISOR OR A LARGE FRANCHISOR ABOUT THE CHANGE IN STATUS.~~

5-108.

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

(b) (1) (I) THIS PARAGRAPH DOES NOT APPLY TO A FRANCHISOR THAT ANNUALLY PRODUCES 20,000 OR FEWER BARRELS OF BEER IN AGGREGATE, IN CONJUNCTION WITH ANY AFFILIATE.

(II) Notwithstanding the terms of a beer franchise agreement, ~~for a franchisor, a large franchisor~~ may not terminate or refuse to continue or renew a beer franchise agreement, or cause a franchisee to resign from a beer franchise agreement, without good cause.

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

5-109.

~~(A) THIS SECTION DOES NOT APPLY TO A LARGE FRANCHISOR.~~

~~(B) SUBJECT TO § 5-107 OF THIS SUBTITLE, BEFORE TERMINATION OF A BEER FRANCHISE AGREEMENT, A SMALL FRANCHISOR SHALL BUY BACK AT FAIR MARKET VALUE ALL THE BEER THAT THE FRANCHISEE PURCHASED FROM THE SMALL FRANCHISOR AND RETAINS IN INVENTORY.~~

(A) THIS SECTION APPLIES ONLY TO A FRANCHISOR THAT ANNUALLY PRODUCES 20,000 OR FEWER BARRELS OF BEER IN AGGREGATE, IN CONJUNCTION WITH ANY AFFILIATE.

(B) (1) SUBJECT TO § 5-107 OF THIS SUBTITLE, AND EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, BEFORE TERMINATION OF OR REFUSAL TO RENEW A BEER FRANCHISE AGREEMENT, A FRANCHISOR SHALL ENTER INTO A TERMINATION AGREEMENT WITH THE TERMINATED FRANCHISEE.

(2) THE TERMINATION AGREEMENT SHALL:

(I) COMPENSATE THE TERMINATED FRANCHISEE FOR THE FAIR MARKET VALUE OF THE TERMINATED FRANCHISE; AND

(II) PROVIDE FOR THE REPURCHASE OF ALL THE FRANCHISOR'S BEER AT AN AMOUNT EQUAL TO THE LAID-IN COST OF THE FRANCHISEE'S INVENTORY OF THE ~~FRANCHISER'S~~ FRANCHISOR'S PRODUCTS THAT ARE IN THE WAREHOUSE OR IN TRANSIT TO THE FRANCHISEE.

(C) (1) IF AN AGREEMENT ON THE COMPENSATION AUTHORIZED UNDER SUBSECTION (B)(2)(I) OF THIS SECTION IS NOT REACHED WITHIN 45 DAYS AFTER THE FRANCHISOR PROVIDES THE NOTICE REQUIRED BY § 5-107(B)(1)(I) OF THIS SUBTITLE, THE MATTER SHALL BE SUBMITTED TO BINDING ARBITRATION FOR THE PURPOSE OF DETERMINING THE COMPENSATION.

(2) THE BINDING ARBITRATION SHALL:

(I) BE ADMINISTERED UNDER THE RULES OF THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION;

(II) TAKE PLACE IN THE STATE; ~~AND~~

(III) BE HEARD BY ONE ARBITRATOR WHO SHALL BE APPOINTED IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES; AND

(IV) BE LIMITED TO 45 DAYS, UNLESS OTHERWISE AGREED TO BY THE PARTIES.

(3) DURING THE PERIOD OF ARBITRATION, THE BEER FRANCHISE AGREEMENT SHALL REMAIN IN EFFECT AND MAY TERMINATE ONLY ON THE DECISION OF THE ARBITRATOR.

(4) THE ARBITRATOR SHALL BE GOVERNED BY THE LAWS OF THE STATE, THE MARYLAND RULES, AND THE COMMERCIAL ARBITRATION RULES.

(5) IN DETERMINING THE FAIR MARKET VALUE OF THE TERMINATED FRANCHISE, THE ARBITRATOR:

(I) MAY CONSIDER ONLY THE PERIOD BEFORE THE FRANCHISOR PROVIDED THE NOTICE REQUIRED BY § 5-107(B)(1)(I) OF THIS SUBTITLE; AND

(II) MAY NOT CONSIDER ANY PERIOD FOLLOWING THE PROVIDING OF THAT NOTICE.

(6) THE RULING OF THE ARBITRATOR SHALL BE FINAL AND SUBJECT TO ENFORCEMENT IN THE COURTS OF THE STATE.

(7) THE COST OF THE ARBITRATION SHALL BE SHARED EQUALLY BY THE PARTIES.

(D) BY WRITTEN MUTUAL AGREEMENT, THE FRANCHISOR AND THE FRANCHISEE MAY DETERMINE ANOTHER METHOD OF TERMINATING THE FRANCHISE AGREEMENT AND PROVIDING COMPENSATION TO THE TERMINATED FRANCHISEE.

(E) UNTIL RESOLUTION REGARDING FAIR MARKET VALUE IS REACHED UNDER SUBSECTION (B) OR (C) OF THIS SECTION AND THE TERMINATED FRANCHISEE HAS RECEIVED PAYMENT IN ACCORDANCE WITH THE DETERMINATION OF FAIR MARKET VALUE:

(1) THE FRANCHISOR AND THE TERMINATED FRANCHISEE SHALL SUPPORT THE FRANCHISOR'S PRODUCTS TO AT LEAST THE SAME EXTENT THAT THE PRODUCTS HAD BEEN PREVIOUSLY SUPPORTED IMMEDIATELY BEFORE THE FRANCHISOR PROVIDED THE NOTICE REQUIRED BY § 5-107(B)(1)(I) OF THIS SUBTITLE; AND

(2) THE TERMINATED FRANCHISEE SHALL CONTINUE TO DISTRIBUTE THE PRODUCTS.

[5-109.] 5-110.

(a) (1) A beer distributor or franchisee may bring an action in a court of general jurisdiction to recover damages against a beer manufacturer, franchisor, or franchisee for violation of this subtitle.

(2) If appropriate, the beer distributor or franchisee is entitled to injunctive relief.

(b) In an action for violation of this subtitle, the prevailing beer distributor or franchisee is entitled to the costs of the action including reasonable attorney's fees.

~~5-201.~~

~~(a) (1) In this section the following words have the meanings indicated:~~

~~(2) "Agreement" means oral or written evidence between a beer manufacturer and a beer wholesaler granting the beer wholesaler the right to offer and sell the brands of beer offered by the beer manufacturer.~~

~~(3) (1) "Beer manufacturer" means:~~

~~[(i)] 1. a [brewer] LARGE FRANCHISOR AS DEFINED IN § 5-101 OF THIS TITLE, fermenter, processor, bottler, or packager of beer located in or outside the State; or~~

~~[(ii)] 2. a person located in or outside the State that enters into an agreement with a beer wholesaler doing business in the State.~~

~~(H) "BEER MANUFACTURER" DOES NOT INCLUDE A SMALL FRANCHISOR AS DEFINED IN § 5-101 OF THIS TITLE.~~

~~(4) "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 when both have knowledge of all of the relevant facts.~~

~~(5) "Successor beer manufacturer" includes a person or license holder who replaces a beer manufacturer with the right to sell, distribute, or import a brand of beer.~~

~~(b) Except for the discontinuance of a brand of beer or for good cause shown as provided under § 5-108 of this title, a successor beer manufacturer that continues in the business is obligated under all the terms and conditions of the agreement made between the previous beer manufacturer and the existing beer wholesaler that were in effect on the date of change of beer manufacturers.~~

~~(c) A successor beer manufacturer that terminates any agreement provision required to be continued under subsection (b) of this section shall remunerate the beer wholesaler 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.~~

~~(d) (1) Before a successor beer manufacturer may terminate any agreement provision required to be continued under subsection (b) of this section and designate another beer wholesaler to replace the existing beer wholesaler, the successor beer manufacturer shall give notice of termination to the beer wholesaler to be replaced.~~

~~(2) On receipt of the notice, the beer wholesaler to be replaced and the designated beer wholesaler shall negotiate in good faith to determine the fair market value of the affected distribution rights.~~

~~(3) If an agreement is reached, the designated beer wholesaler promptly shall pay the fair market value as compensation to the beer wholesaler to be replaced.~~

~~(4) If an agreement is not reached within 30 days after the beer wholesaler to be replaced receives notice, the designated beer wholesaler and the beer wholesaler to be replaced shall enter into nonbinding mediation with a mediator in the State who practices in accordance with Title 17 of the Maryland Rules.~~

~~(5) If an agreement is not reached within 45 days after mediation begins, the beer wholesaler to be replaced shall within 90 days bring an action in a court of general jurisdiction against a successor beer manufacturer to determine and award fair market value of the terminated brand or brands.~~

~~(e) Until resolution regarding fair market value is reached under subsection (d) of this section and the beer wholesaler to be replaced has received payment in accordance with the determination of fair market value:~~

~~(1) the beer wholesaler to be replaced and the successor beer manufacturer shall support the brand to at least the same extent that the brand had been previously supported immediately before the successor beer manufacturer acquired rights to the brand; and~~

~~(2) the beer wholesaler to be replaced shall continue to distribute the brand.~~

SECTION 2. AND BE IT FURTHER ENACTED, That for a ~~small~~ franchisor that annually produces 20,000 or fewer barrels of beer in aggregate, in conjunction with any affiliate, and that is a party to a written franchise agreement existing before July 1, 2019:

~~(1) the law in effect on June 30, 2019, continues to apply until expiring on December 31, 2019; and~~

~~(2) this Act shall apply beginning on January 1, 2020, the terms of the agreement relating to compensation and repurchase of inventory shall continue in force and effect unless otherwise mutually agreed by the parties.~~

~~SECTION 3. AND BE IT FURTHER ENACTED, That a presently existing obligation or contract right may not be impaired in any way by this Act.~~

~~SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply to a beer franchise agreement in existence on or entered into on or after January 1, 2020.~~

SECTION ~~2~~ 5 ~~3~~. AND BE IT FURTHER ENACTED, That, ~~subject to Section 2 of this Act,~~ this Act shall take effect ~~July 1, 2019~~ January 1, 2020.

Approved by the Governor, April 30, 2019.