

CHAPTER 370

(House Bill 205)

AN ACT concerning

Alcoholic Beverages – Beer Manufacturer and Distributor Agreements – Obligation of Successor Manufacturer

FOR the purpose of requiring a successor beer manufacturer who ~~violates~~ terminates a certain agreement with a beer distributor to remunerate the beer distributor a sum equal to the fair market value calculated from the date of the ~~violation~~ termination for the sale of the beer; ~~specifying that a beer distributor or franchisee may bring a certain action against a successor beer manufacturer under certain circumstances to obtain certain remedies;~~ requiring a successor beer manufacturer to give certain notice to a surviving beer distributor before termination of certain agreements; requiring certain negotiations, certain payments, and certain mediation under certain circumstances; requiring a surviving beer distributor to bring a certain action within a certain period of time against a successor beer manufacturer to determine and recover certain value; requiring certain surviving beer distributors and successor beer manufacturers to support and distribute certain brands under certain circumstances; repealing a defined term; defining a certain term; and generally relating to beer manufacturer and distributor agreements.

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

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

Article 2B – Alcoholic Beverages

21–103.

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

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

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

(4) [“Gross profit” means:

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

(ii) The FOB cost and the transportation cost of the brand to the beer distributor] **“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 licensee 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 § 17–103 of this article, a successor beer manufacturer that continues in the business is obligated under the agreement that was made between the previous beer manufacturer and the surviving beer distributor under all the terms and conditions of that agreement that were in effect on the date of change of beer manufacturers.

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

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

(2) ON RECEIPT OF THE NOTICE, THE SURVIVING BEER DISTRIBUTOR AND THE DESIGNATED BEER DISTRIBUTOR 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 DISTRIBUTOR SHALL PROMPTLY PAY THE FAIR MARKET VALUE AS COMPENSATION TO THE SURVIVING BEER DISTRIBUTOR.

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

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

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

~~(2) INJUNCTIVE RELIEF; AND~~

~~(3) THE COSTS OF THE ACTION, INCLUDING REASONABLE ATTORNEYS' FEES 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 SURVIVING BEER DISTRIBUTOR HAS RECEIVED PAYMENT IN ACCORDANCE WITH THE DETERMINATION OF FAIR MARKET VALUE:

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

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

Approved by the Governor, May 13, 2008.