

HOUSE BILL NO. 49

INTRODUCED BY T. BROCKMAN

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOLIC BEVERAGE LAWS RELATING TO BEER WHOLESALER AND TABLE WINE DISTRIBUTOR AGREEMENTS; REQUIRING BEER WHOLESALERS AND TABLE WINE DISTRIBUTORS TO MAINTAIN AGREEMENTS; AMENDING SECTIONS 16-3-217, 16-3-221, 16-3-222, 16-3-224, AND 16-3-416, MCA; REPEALING SECTIONS 16-3-226 AND 16-3-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Maintain brewer-wholesaler or beer importer-wholesaler

agreements. The brewer and wholesaler or the beer importer and wholesaler shall maintain a copy of any agreement, contract, or franchise between the two parties and shall supply a copy of any agreement, contract, or franchise to the department on request.

Section 2. Section 16-3-217, MCA, is amended to read:

"16-3-217. Purposes. The legislature finds and declares that the purposes of 16-3-218 through ~~16-3-226~~, 16-3-225 and [section 1] are to assure continued interbrand competition in malt beverage sales through competing independent wholesalers and to assure breweries the ability to protect the reputations of their products through quality control arrangements."

Section 3. Section 16-3-221, MCA, is amended to read:

"16-3-221. Illegal acts by brewers or beer importers. (1) It is unlawful for any brewer or beer importer or any officer, agent, or representative of any brewer or beer importer to:

(a) coerce, attempt to coerce, or persuade any person licensed to sell beer at wholesale to enter into any agreement or to take any action that would violate or tend to violate any of the laws of this state or any

1 rules promulgated by the department;

2 (b) sell its products in the state without a written contract, which conforms to the provisions of 16-3-
3 221 through ~~16-3-226~~ 16-3-225 and [section 1], with each appointed licensed wholesale distributor;

4 (c) designate or allow more than one wholesale distributor to sell or distribute a specific brand of
5 the brewer's or beer importer's products to retail licensees in the same area, provided that nothing in this part
6 prohibits the brewer or beer importer from designating more than one wholesale distributor to sell or distribute
7 different brands of the same manufacturer to retail licensees in the same area;

8 (d) fix or maintain the price at which a wholesale distributor resells the brewer's or beer importer's
9 products. Without limitation, it is a violation of this section if:

10 (i) after a wholesale distributor has exceeded a resale price increase recommended by a brewer
11 or beer importer, the brewer or beer importer raises the price that it charges the wholesale distributor for those
12 products within 60 days;

13 (ii) after a wholesale distributor has exceeded a resale price increase recommended by a brewer
14 or beer importer, the brewer or beer importer raises the price that it charges the wholesale distributor in an
15 amount proportionately larger than the amount that it raised the wholesale distributor's prices initially when
16 compared to the increase in the resale price that it recommended to the wholesale distributor; or

17 (iii) the brewer or beer importer links or ties its participation in promotional discounts to the
18 wholesale distributor's compliance with any recommended resale price.

19 (e) cancel, terminate, discontinue, or fail to renew, except for just cause and in accordance with
20 the current terms and standards established by the brewer or beer importer then equally applicable to all
21 wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January
22 1, 1974, or entered into after that date to sell beer manufactured by the brewer or imported by the beer
23 importer. A brewer or beer importer may, notwithstanding the preceding sentence, make reasonable
24 classifications among wholesalers. If a brewer or beer importer cancels or terminates a wholesaler's franchise,
25 the brewer or beer importer has the burden of proving that the classification was reasonable and not arbitrary.
26 The provisions of 16-3-221 through ~~16-3-226~~ 16-3-225 and [section 1] must be a part of any franchise, contract,
27 agreement, or understanding, whether written or oral, between any wholesaler of beer licensed to do business
28 in this state and any manufacturer or beer importer doing business with the licensed wholesaler just as though

1 the provisions had been specifically agreed upon between the wholesaler and the manufacturer or beer
2 importer. A wholesaler of beer licensed to conduct business in the state may not waive any of the protections or
3 agree to any provision contrary to 16-3-221 through ~~16-3-226~~ 16-3-225 and [section 1] by any conduct,
4 including but not limited to the signing of any contract or agreement with terms contrary to those provisions.

5 (2) (a) Just cause as used in subsection (1)(e) means that the wholesaler failed to comply with the
6 reasonable requirements placed on the wholesaler by the brewer or beer importer as a part of any written
7 franchise, contract, or agreement between the parties.

8 (b) The sale or purchase or other restructuring of the brewer or beer importer by a successor in the
9 manufacturing tier of the beer industry does not constitute just cause as that term is used in subsection (1)(e).

10 (c) For the purposes of this subsection (2), a successor means a person or entity who replaces a
11 brewer or beer importer with regard to the right to manufacture, sell, distribute, or import a brand or brands of
12 beer regardless of the character or form of the succession. A successor is obligated to all of the terms and
13 conditions of any franchise, contract, agreement, or understanding, whether written or oral, in effect on the date
14 of succession. A successor has the right to contractually require its wholesalers to comply with operational
15 standards of performance if the standards are uniformly established for all of the successor's wholesalers and
16 conform to the requirements of this section."
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18 **Section 4.** Section 16-3-222, MCA, is amended to read:

19 **"16-3-222. Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts,**
20 **agreements, and franchises.** All contracts, agreements, or franchises between a brewer and a wholesaler or
21 a beer importer and a wholesaler must specifically set forth or contain the following:

22 (1) that the brewer or beer importer or any officer, agent, or representative of any brewer or beer
23 importer and the wholesaler involved mutually shall determine the size or extent of the area in which the
24 wholesaler may sell or distribute the products of the brewer or beer importer to the retail licensees. The territory
25 must be the territory agreed upon between the wholesaler and brewer or the wholesaler and beer importer and
26 may not be changed without the mutual consent of both the wholesaler and brewer or the wholesaler and beer
27 importer.

28 (2) the agreed-upon brands of the brewer or beer importer to be sold by the wholesaler;

(3) that the brewer or beer importer recognizes that the wholesaler is free to manage the wholesaler's business in the manner that the wholesaler considers best and that this prerogative vests in the wholesaler the exclusive right to establish selling prices, to select the brands that the wholesaler wishes to handle, and to determine the effort and resources that the wholesaler will exert to develop and promote the sale of the brewer's or beer importer's products handled by the wholesaler;

(4) a procedure for the review of alleged wholesaler deficiencies asserted by the brewer or beer importer to constitute just cause as provided in 16-3-221, including the submission in writing to the wholesaler by the brewer or beer importer of the deficiencies, if the deficiencies are susceptible of correction and if the wholesaler desires to correct the deficiencies, and that a reasonable period of time must be given the wholesaler for rectification of the deficiencies prior to any notice of intent to terminate;

(5) a termination clause providing that the brewer or beer importer shall deliver, in writing, to the wholesaler a 60-day notice of intent to terminate the agreement, contract, or franchise;

(6) that all agreements between a brewer and a wholesaler are interpreted and governed by the laws of Montana and that those laws must be liberally construed to effectuate the remedial purpose of the protections of the beer franchise law contained in 16-3-221 through ~~16-3-226~~ 16-3-225 and [section 1];

(7) that in any dispute resulting in litigation between a brewer or a beer importer and a wholesaler, the litigation must occur in a Montana court, either federal or state, unless that forum would create an unreasonable burden on any party, as determined by the court in which the litigation is commenced;

(8) that all agreements between a brewer or a beer importer and a wholesaler must recognize the constitutional right to a jury trial as set forth in Article II, section 26, of the Montana constitution."

Section 5. Section 16-3-224, MCA, is amended to read:

"16-3-224. Contractual or franchise relationship -- existence by actions. The doing or accomplishing of any of the following acts constitutes prima facie evidence of a contractual or franchise relationship between a licensed wholesaler and a brewer or beer importer within the contemplation of 16-3-221 through ~~16-3-226~~ 16-3-225 and [section 1]:

(1) the shipment, preparation for shipment, or acceptance of any order by any brewer or beer importer or its agent for any beer to a licensed wholesaler within this state;

(2) the payment by any licensed wholesaler within this state or the acceptance of payment by any brewer or beer importer or its agent for the shipment of an order of beer intended for sale within this state."

Section 6. Section 16-3-416, MCA, is amended to read:

"16-3-416. Table wine distributor provisions. (1) A supplier or table wine distributor must have a written agreement of distributorship that provides for purchase of the supplier's products from the supplier by the table wine distributor.

(2) An agreement of distributorship must provide that:

(a) a supplier shall notify a table wine distributor in writing at least 60 days prior to termination of an agreement of distributorship unless a termination without notice is permitted as provided in 16-3-417. The written notice must state the reasons for termination. Notice of termination is void if within 60 days of the notice, the table wine distributor rectifies the deficiency stated as the reason for termination and if the deficiency was not stated as reason for termination in a notice previously voided under the provisions of this subsection.

(b) a supplier may not unreasonably withhold or delay approval of a sale or transfer of the ownership, management, or control of a table wine distributorship. However, a table wine distributor shall give a supplier no less than 60 days' prior written notice of any material change in ownership, management, or control.

(3) ~~Within 60 days after entering into an agreement of distributorship, the supplier shall advise the department of the agreement by filing a copy of the agreement that must include the sales area or areas designated for the table wine distributor.~~ The supplier and table wine distributor shall maintain a copy of the agreement of distributorship and shall supply a copy of the agreement of distributorship to the department on request.

(4) If a supplier terminates an agreement of distributorship under the provisions of subsection (2)(a), the table wine distributor subject to the termination is entitled to compensation for the laid-in cost of inventory. In the event of any termination of the agreement by the supplier other than termination for good cause or for any reason set forth in 16-3-417(3), the distributor is entitled to compensation for the laid-in cost of inventory and to liquidated damages based on the sales of the brand or brands involved, as may be provided in the agreement. If the supplier and the distributor are unable to agree on the amount of liquidated damages, the amount of liquidated damages must be determined by an arbitrator appointed under subsection (5) of this

1 section.

2 (5) If undertaken in good faith by a supplier, a supplier may terminate an agreement of
3 distributorship for a legitimate business reason not within the definition of good cause if an arbitrator appointed
4 by the department finds, after hearing the supplier and the table wine distributor, that the termination is in the
5 best interest of the table wine brand concerned. Arbitration under this section must be conducted under the
6 provisions of Title 27, chapter 5.

7 (6) All agreements of distributorship are interpreted and governed by the laws of Montana.

8 (7) In any dispute resulting in litigation between a supplier and a distributor, the litigation must
9 occur in a Montana court, federal or state, unless that forum would create an unreasonable burden on any
10 party, as determined by the court in which the litigation is commenced.

11 (8) Agreements between a supplier and a distributor must recognize the constitutional right to a
12 jury trial as set forth in Article II, section 26, of the Montana constitution.

13 (9) A provision in an agreement of distributorship that is inconsistent with the requirements of this
14 section is void."

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16 NEW SECTION. Section 7. Repealer. The following sections of the Montana Code Annotated are
17 repealed:

18 16-3-226. Brewer-wholesaler or beer importer-wholesaler agreements filed with department.

19 16-3-420. Applicability.

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21 NEW SECTION. Section 8. Codification instruction. [Section 1] is intended to be codified as an
22 integral part of Title 16, chapter 3, part 2, and the provisions of Title 16, chapter 3, part 2, apply to [section 1].

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24 NEW SECTION. Section 9. Effective date. [This act] is effective on passage and approval.

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