

SECOND REGULAR SESSION

SENATE BILL NO. 529

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS SCHNEIDER, BENTLEY AND SINGLETON.

Pre-filed December 1, 1997, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S1978.04I

AN ACT

To amend chapter 311, RSMo, by adding thereto fourteen new sections relating to wholesalers and brewers of beer.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 311, RSMo, is amended by adding thereto fourteen new sections, to be known as sections 311.900, 311.901, 311.903, 311.906, 311.909, 311.912, 311.915, 311.918, 311.921, 311.924, 311.927, 311.930, 311.933 and 311.935, to read as follows:

311.900. Sections 311.900 to 311.935 shall be known and may be cited as the "Beer Industry Fair Dealing Law".

311.901. As used in sections 311.900 to 311.933, the following terms mean:

(1) "Agreement", a written arrangement or contract for a definite or indefinite period between a brewer and a wholesaler pursuant to which a wholesaler has been granted the right to purchase, resell and distribute as wholesaler any brand or brands of beer offered by a brewer;

(2) "Beer", a beverage obtained by the alcoholic fermentation of an infusion or concoction of barley or other grain, malt, and hops in water and includes beer, ale, stout, lager beer and porter. The term beer shall include malt beverage products containing less than one-half of one percent of alcohol by volume and marketed for adult consumption as an alternative beverage to beer;

(3) "Brand", any word, name, group of letters, symbol or combination thereof that is adopted and used by a brewer to identify a specific beer product and to distinguish that beer product from another beer product;

(4) "Brand extension", any brand that incorporates all or a substantial part of

the unique features of a preexisting brand of the same brewer and which relies on the goodwill associated with that preexisting brand;

(5) "Brewer", a person engaged in the business as a manufacturer of beer, a successor brewer as defined in this section, out-of-state solicitor of beer or a person who owns or controls the trademark, brand or name of beer, whose brands of beer are being distributed through duly licensed wholesalers in this state;

(6) "Good cause", failure by the wholesaler, to comply substantially with the provisions of an agreement or understanding with the supplier, which provisions are both essential and reasonable; or use of bad faith or failure to observe reasonable commercial standards of fair dealing in the trade. The provisions may not be discriminating either by their terms or in the methods of their enforcement as compared with provisions imposed on other similarly situated wholesalers by the brewer. The provisions shall not be inconsistent with sections 311.900 to 311.933, or in violation of any law or regulation. Good cause does not include the sale or purchase of a brewer;

(7) "Good faith", the duty of each party to any franchise and all officers, employees or agents thereof to act in a fair and equitable manner towards each other;

(8) "Master distributor", a person who, in addition to being a wholesaler, acts in the same or similar capacity as a brewer or outside seller of one or more brands of beer to other wholesalers on a regular basis in the normal course of business;

(9) "Person", a natural person, corporation, partnership, limited liability company, trust agency or other form of business enterprise. The term, person, also includes heirs, assigns, personal representatives and guardians;

(10) "Reasonable standards and qualifications", criteria applied by the brewer to similarly situated wholesalers during a period of twenty-four months prior to the proposed change in manager or successor manager of the wholesaler's business;

(11) "Successor brewer", any person who in any way obtains the rights that a brewer once had to manufacture or distribute a brand or brands of beer, whether by merger, purchase of corporate shares, purchase of assets or any other arrangement;

(12) "Territory" or "sales territory", the geographic area of distribution and sale responsibility designated by an agreement between a wholesaler and brewer, as provided in sections 311.181 and 311.182 for any brands of the brewer;

(13) "Wholesaler" or "beer wholesaler", any person licensed pursuant to sections 311.010 to 311.880 to import or cause to be imported into the state or to purchase or cause to be purchased within this state, any beer for sale or resale to retailers or wholesalers, whether within or without this state.

311.903. Notwithstanding the terms, provisions or conditions of any agreement, no brewer shall amend, cancel, terminate or refuse to continue to renew any agreement,

or cause a wholesaler to resign from an agreement, unless the brewer:

- (1) Satisfies the notice and opportunity to cure requirements of section 311.906;
- (2) Acts in good faith; and
- (3) Has good cause for the cancellation, termination, nonrenewal, discontinuance or forced resignation.

311.906. 1. Notwithstanding any provision to the contrary, any agreement between a brewer and a wholesaler, a brewer who intends to terminate, cancel, discontinue or refuse to renew any agreement with a wholesaler shall furnish written notice to that effect to the wholesaler not less than ninety days before the effective date of the intended actions and shall provide the wholesaler with a bona fide opportunity to substantially cure any claimed deficiency within the ninety days.

2. The notice shall be sent by certified mail and shall contain at a minimum both the effective date of the intended action and a statement of the nature of the intended action containing the brewer's reasons therefor.

3. In no event shall a termination, cancellation, discontinuance or nonrenewal be effective until at least ninety days from the wholesaler's receipt of written notice pursuant to this section, unless the wholesaler has consented in writing to a shorter period.

4. Notwithstanding subsection 1 of section 311.903, a brewer may terminate or refuse to renew an agreement without furnishing any prior notification upon any of the following:

- (1) The bankruptcy, dissolution or liquidation of the wholesaler;
- (2) The voluntary assignment of the wholesaler's assets for the benefit of creditors or a similar disposition of substantially all of the assets of the wholesaler's business;
- (3) The revocation or suspension for more than thirty-one days of a wholesaler's federal basic permit, state or local license required of the wholesaler for the normal operation of its business; or
- (4) The conviction of a wholesaler or any owner of a wholesaler of a felony.

311.909. No brewer shall do any of the following:

- (1) Require a wholesaler to assent to any unreasonable requirement, condition, understanding or term of an agreement prohibiting a wholesaler from selling the product of any other brewer or brewers; or
- (2) Require any wholesaler to accept delivery of any beer or any other item or commodity which shall not have been ordered by the wholesaler.

311.912. 1. A brewer who assigns a brand extension to a wholesaler shall assign the brand extension to the wholesaler to whom the brewer granted the exclusive sales territory for the brand from which such brand extension resulted. This requirement

shall not apply to assignments of brand extensions to wholesalers that were made by a brewer before the effective date of this section.

2. If prior to the effective date of this section a brewer assigned a brand extension to a wholesaler who was not the appointed wholesaler for the brand from which the brand extension was made, then any additional brand extension shall be assigned to the wholesaler who first had such brand.

311.915. 1. No brewer shall unreasonably withhold or delay its approval of any assignment, sale or transfer of the stock of a wholesaler or all or any portion of a wholesaler's assets, wholesaler's voting stock, the voting stock of any parent corporation or the beneficial ownership or control of any other entity owning or controlling the wholesaler, including the wholesaler's rights and obligations under the terms of an agreement, whenever the person to be substituted meets reasonable standards imposed not only upon the wholesaler but upon all other wholesalers of that brewer of the same general class, taking into account the size and location of the sales territory and market to be served.

2. Upon the death of one of the partners of a partnership operating the business of a wholesaler, no brewer shall deny any surviving partner or partners of such partnership the right to become a successor-in-interest to the agreement between the brewer and such partnership, provided that any such survivor has been active in the management of the partnership or is otherwise capable of carrying on the business of the partnership.

3. Notwithstanding the provisions of subsections 1 and 2 of this section, upon the death of a wholesaler no brewer shall deny approval for any transfer of ownership to a surviving spouse or adult child of such wholesaler, provided however, that such subsequent transfers of such ownership by such surviving spouse or adult child shall thereafter be subject to the provisions of subsections 1 and 2 of this section.

311.918. 1. Any brewer who without good cause cancels, terminates or fails to renew any agreement, or unlawfully denies approval of, or unreasonably withholds consent to any assignment, transfer or sale of a wholesaler's business assets or voting stock or other equity securities shall pay such wholesaler with whom it has an agreement pursuant to section 311.900 to 311.933, the fair market value of the wholesaler's business with relation to the affected brand or brands. In determining fair market value consideration shall be given to all elements of value including, but not limited to, goodwill and going concern value, and future lost profits.

2. In the event that the brewer and the wholesaler are unable to mutually agree on whether or not good cause exists for cancellation pursuant to sections 311.900 to 311.933, or on the reasonable compensation to be paid for the fair market value of the wholesaler's business the dispute may, by mutual agreement of the parties, be

submitted to a neutral arbitrator to be selected by the parties. Arbitration shall be conducted in accordance with the Missouri uniform arbitration act, sections 435.350 to 435.470, RSMo. Arbitration costs shall be paid one-half by the wholesaler and one-half by the brewer. The award of the arbitrator shall be final and binding on the parties.

311.921. 1. If a brewer fails to comply with sections 311.900 to 311.933, otherwise engages in conduct prohibited by sections 311.900 to 311.933, or if a brewer and wholesaler are not able to agree on reasonable compensation pursuant to section 311.918, and the dispute is not submitted to arbitration, the aggrieved wholesaler may maintain a civil action in a court of competent jurisdiction in the county in which the wholesaler's principal place of business is located.

2. In any action pursuant to this section the court may grant any equitable relief the court determines necessary to remedy the effects of conduct found to exist which is prohibited by sections 311.900 to 311.933, RSMo.

3. If the wholesaler prevails in any action pursuant to subsection 1 of this section such wholesaler shall be entitled to actual damages including the value of the wholesaler's business as specified in section 311.918, reasonable attorneys' fees and court costs.

311.924. 1. No brewer by means of any term or condition of any agreement shall fix, maintain or establish the price at which the wholesaler sells any alcoholic beverage.

2. After a wholesaler has exceeded a resale price increase recommended by a brewer the brewer shall not raise the price it charges such wholesaler for the brewer's products within sixty days of the price increase or raise the price it charges the wholesaler in an amount proportionately larger than the amount the brewer raised the wholesaler's prices initially when compared to the resale price such brewer recommended to the wholesaler.

311.927. No brewer shall require any wholesaler to waive compliance with any provision of sections 311.900 to 311.933. The provisions of sections 311.900 to 311.933, shall not be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.

311.930. Except for good cause, as defined in 311.900, the purchase of a brewery, where the purchaser continues in business as a brewer, shall obligate the new brewer to all terms and conditions of the predecessor brewer's agreement in effect on the date of the purchase. "Purchase", for the purposes of this section, includes but is not limited to, the sale of stock, sale of assets, merger, lease, transfer or consolidation.

311.933. No brewer or wholesaler shall restrict or inhibit, directly or indirectly, the right of free association among brewers or wholesalers for any lawful purpose.

311.935. This law shall cover agreements in existence on the date of enactment of this law and also shall apply to agreements entered into and any amendment,

cancellation, termination, nonrenewal, discontinuance, forced resignation or material modification of any agreement occurring after the date of enactment of this law.

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