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Sub. H. B. No. 194

To amend sections 1333.83, 1333.84, and 1333.85 and to enact section 1333.831 of the Revised Code to revise the Alcohol Franchise Law.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1333.83, 1333.84, and 1333.85 be amended and section 1333.831 of the Revised Code be enacted to read as follows:

Sec. 1333.83. Every manufacturer of alcoholic beverages shall contract with or offer in good faith to its distributors a written franchise providing for, and specifying the rights and duties of both parties in effecting, the sale of the specified brands or products of the manufacturer. ~~Any~~ Except as provided in section 1333.831 of the Revised Code, any provision of a franchise agreement that waives any of the prohibitions of, or fails to comply with, sections 1333.82 to 1333.87 of the Revised Code is void and unenforceable. Any notice or acceptance required to be given or made by either party to the franchise shall be in writing and signed by the authorized representative of the parties. Any breach, actual or claimed, of a franchise made pursuant to this section shall not be grounds for

suspension or revocation of any permit or supplier registration issued by the division of liquor control. When a distributor of beer or wine for a manufacturer, or the successors or assigns of the manufacturer, distributes the beer or wine for ninety days or more without a written contract, a franchise relationship is established between the parties, and sections 1333.82 to 1333.87 of the Revised Code apply to the manufacturer, its successor or assigns, and the distributor.

Sec. 1333.831. (A) As used in this section:

(1) "Fair market value" means the highest dollar amount at which a seller would be willing to sell and a buyer willing to buy when each possesses all information relevant to the transaction.

(2) "Manufacturer" means a person, whether located in this state or elsewhere, that manufactures twenty-five thousand or less barrels of alcoholic beverages each year.

(3) "Terminate" includes cancel, not renew, and discontinue.

(B) This section applies to a franchise agreement entered into, amended, or renewed on or after the effective date of this section.

(C) Notwithstanding any other provision of law to the contrary, and except as explicitly otherwise stated in a franchise agreement, a manufacturer may terminate a franchise with a distributor for any reason or no reason if the manufacturer provides written notice to the distributor not later than forty-five days before the effective date of the termination of the franchise. However, neither party is required to give to the other party such notice if any of the following

events occur:

(1) The filing of a petition in bankruptcy or an assignment for the benefit of creditors by the other party;

(2) The filing of an involuntary petition in bankruptcy against either party, which petition is not dismissed within thirty days;

(3) The cancellation, revocation, or suspension for more than thirty days of any permit required to be held by either party to authorize the handling of alcoholic beverages.

(D) On the effective date of any such termination, the distributor is entitled to compensation according to one of the following:

(1) If the written franchise agreement does not establish a method or formula for compensating a distributor upon termination of an agreement, the distributor is entitled to both of the following:

(a) The fair market value of the terminated franchise;

(b) The repurchase of all the manufacturer's merchantable product at an amount equal to the laid-in cost of the distributor's inventory of the manufacturer's products that are in the distributor's warehouse or in transit to the distributor. Nonmerchantable products shall be disposed of in accordance with the preexisting agreement of the parties or, if no agreement exists, shall be disposed of with the manufacturer and distributor sharing equally in the costs of disposal.

(2) If the written franchise agreement establishes a method or formula for compensating a distributor upon termination of an agreement, the distributor is entitled to

compensation according to such method or formula.

(E)(1) If the manufacturer and distributor do not agree upon the amount of compensation provided under division (D) of this section, the manufacturer shall pay the distributor, on or before the termination date, a good faith estimate of compensation due under division (D) of this section, including a good faith estimate of the fair market value if division (D)(1) of this section applies. The distributor shall make merchantable inventory available for pickup by the manufacturer or its designee.

(2) If the distributor believes that the payment made by the manufacturer under division (E)(1) of this section was less than the compensation due under division (D) of this section or if no payment is made, the distributor may, within forty-five days after the effective date of the termination of the franchise, bring an action for monetary compensation for the difference between the good faith payment and what the distributor believes, in good faith, constitutes compensation due under division (D) of this section. A distributor may bring such an action in any court of competent jurisdiction. Instead, if the manufacturer and distributor have agreed to an alternative dispute resolution mechanism, including arbitration or mediation, a distributor may bring such action through the alternative dispute mechanism.

Sec. 1333.84. ~~Notwithstanding~~ Except as provided in section 1333.831 of the Revised Code and notwithstanding the terms of any franchise, no manufacturer or distributor engaged in the sale and distribution of alcoholic beverages, or a subsidiary of any such manufacturer, shall:

(A) Fail to act in good faith or without just cause in

acting or purporting to act under the terms of a franchise or in cancelling or failing to renew a franchise;

(B) Award an additional franchise for the sale of the same brand within the same sales area or territory. No franchise prohibits a retail permit holder having permits at more than one location from buying from one or more B-2 or B-5 permit holders, even if all permit premises are not located in the same franchise area or territory. Nothing contained in this division shall be construed as modifying the provisions of section 4301.241 of the Revised Code. Nothing contained in this division precludes a manufacturer of wine from awarding a franchise, or requires a manufacturer of wine to award a franchise, for the sale of a new brand to any B-2 or B-5 permit holder.

(C) Require a distributor to submit profit and loss statements, balance sheets, or financial records as a requirement to retain its franchise;

(D) Without reasonable cause, withhold delivery of alcoholic beverages ordered by a distributor, or change or amend a distributor's quota of a manufacturer's product or brand;

(E) Coerce a distributor by any means to participate in or contribute to any local or national advertising fund controlled directly or indirectly by a manufacturer;

(F) Refuse to recognize the rights of surviving partners, shareholders, or heirs and fail to act in good faith in accordance with reasonable standards for fair dealing, with respect to the distributor's right to sell, assign, transfer or otherwise dispose of the distributor's business, in all or in part, except that the distributor shall have no right to sell, assign, or transfer the franchise without the prior consent of

the manufacturer, who shall not unreasonably withhold the manufacturer's consent.

(G)(1) On and after ~~the effective date of this amendment~~ July 30, 2013, do either of the following:

(a) Award a distribution franchise or territory to itself, to a subsidiary, or to another entity in which it has any financial interest, directly or indirectly, by stock ownership, or through interlocking directors in a corporation, or otherwise, if that franchise, territory, or portion of that territory has been previously awarded, sold, assigned, or transferred to a distributor;

(b) Acquire a franchise or territory if that franchise, territory, or portion of that territory has been previously awarded, sold, assigned, or transferred to a distributor.

(2) Division (G)(1) of this section does not prohibit a manufacturer or subsidiary of a manufacturer from continuing to operate a distribution franchise or distribute alcoholic beverages within a designated territory if prior to the effective date of this amendment the manufacturer either acquired the distribution franchise or territory, or awarded the franchise or territory to itself or a subsidiary.

(3) Division (G)(1) of this section does not, and shall not be construed to, limit the actions that may be taken in accordance with an A-1c permit under section 4303.022 of the Revised Code or a B-2a permit under section 4303.071 of the Revised Code.

(4) Notwithstanding division (G)(1) of this section or any permit requirement under sections 4303.06, 4303.07, 4303.071, 4303.08, 4303.09, and 4303.10 of the Revised Code, if a

distribution franchise is canceled or territory is substantially changed by a manufacturer pursuant to either division (A)(1) or (2) of section 1333.85 of the Revised Code, the manufacturer may acquire or award itself the franchise or territory for not longer than one hundred eighty days from the date of cancellation. After the one hundred eighty day period, the manufacturer shall sell or transfer the franchise or territory to a distributor in which the manufacturer does not have any financial interest, directly or indirectly, by stock ownership, or through interlocking directors in a corporation, or otherwise.

Sec. 1333.85. Except as provided in divisions (A) to (D) of this section and except as provided in section 1333.831 of the Revised Code, no manufacturer or distributor shall cancel or fail to renew a franchise or substantially change a sales area or territory without the prior consent of the other party for other than just cause and without at least sixty days' written notice to the other party setting forth the reasons for such cancellation, failure to renew, or substantial change.

(A) Neither party shall be required to give to the other party such notice if any of the following events occur:

(1) The filing of a petition in bankruptcy or an assignment for the benefit of creditors by the other party;

(2) The filing of an involuntary petition in bankruptcy against either party, which petition is not dismissed within thirty days;

(3) The cancellation, revocation, or suspension for more than thirty days of any permit required to be held by either party to authorize the handling of alcoholic beverages.

The occurrence of any one of the foregoing events shall constitute just cause for cancellation or failure to renew a franchise or substantially changing a sales area or territory without the prior consent of the other party.

(B) The occurrence of any of the following events shall not constitute just cause for cancellation of or failure to renew a franchise or substantially changing a sales area or territory without the prior consent of the other party:

(1) The failure or refusal on the part of either party to engage in any act or practice which would result in a violation of any federal law or regulation or any law or rule of this state;

(2) The restructuring, other than in bankruptcy proceedings, of a manufacturer's business organization;

(3) A unilateral alteration of the franchise by a manufacturer for a reason unrelated to any breach of the franchise or violation of sections 1333.82 to 1333.86 of the Revised Code by the distributor;

(4) A manufacturer's sale, assignment, or other transfer of the manufacturer's product or brand to another manufacturer over which it exercises control.

(C) If a manufacturer or distributor cancels or fails to renew a franchise, the distributor shall sell to the manufacturer and the manufacturer shall purchase from the distributor all of the distributor's inventory of the manufacturer's products and sales aids at the laid-in cost to the distributor including freight and cartage, provided that upon payment therefor the distributor shall transfer to the manufacturer good title to all such property free of liens and

encumbrances.

(D) If a successor manufacturer acquires all or substantially all of the stock or assets of another manufacturer through merger or acquisition or acquires or is the assignee of a particular product or brand of alcoholic beverage from another manufacturer, the successor manufacturer, within ninety days of the date of the merger, acquisition, purchase, or assignment, may give written notice of termination, nonrenewal, or renewal of the franchise to a distributor of the acquired product or brand. Any notice of termination or nonrenewal of the franchise to a distributor of the acquired product or brand shall be received at the distributor's principal place of business within the ninety-day period. If notice is not received within this ninety-day period, a franchise relationship is established between the parties. If the successor manufacturer complies with the provisions of this division, just cause or consent of the distributor shall not be required for the termination or nonrenewal. Upon termination or nonrenewal of a franchise pursuant to this division, the distributor shall sell and the successor manufacturer shall repurchase the distributor's inventory of the terminated or nonrenewed product or brand as set forth in division (C) of this section, and the successor manufacturer also shall compensate the distributor for the diminished value of the distributor's business that is directly related to the sale of the product or brand terminated or not renewed by the successor manufacturer. The value of the distributor's business that is directly related to the sale of the terminated or nonrenewed product or brand shall include, but shall not be limited to, the appraised market value of those assets of the distributor principally devoted to the sale of the terminated or nonrenewed product or brand and the goodwill

associated with that product or brand.

Section 2. That existing sections 1333.83, 1333.84, and 1333.85 of the Revised Code are hereby repealed.