

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 142
HOUSE BILL 1020

AN ACT REVISING THE BEER FRANCHISE LAW.

The General Assembly of North Carolina enacts:

Section 1. Chapter 18B of the General Statutes is amended by adding the following new Article 13:

"ARTICLE 13.
"Beer Franchise Law.

"§ 18B-1300. Purpose.

Pursuant to the authority of the State under the Twenty-First Amendment to the United States Constitution, the General Assembly finds that regulation of the business relations between malt beverage manufacturers and importers and the wholesalers of such products is necessary to:

- (1) Maintain stability and healthy competition in the malt beverage industry in this State.
- (2) Promote and maintain a sound, stable and viable three-tier system of distribution of malt beverages to the public.
- (3) Promote the compelling interest of the public in fair business relations between malt beverage suppliers and wholesalers, and in the continuation of beer franchise agreements on a fair basis.
- (4) Maintain a uniform system of control over the sale, purchase and distribution of malt beverages in the State.

"§ 18B-1301. Definitions.

- (1) 'Supplier' means a brewer, fermenter, processor, bottler, packager or importer of malt beverages, including anyone who holds a brewery, malt beverages importer or nonresident malt beverages vendor permit.
- (2) 'Wholesaler' means the holder of a malt beverages wholesaler permit.

"§ 18B-1302. Franchise agreement.

(a) Nature of Agreement. – A franchise agreement is a commercial relationship between a wholesaler and supplier of a definite or indefinite duration, whether written or oral, including:

- (1) A relationship whereby a wholesaler is granted the right to offer and sell the brands of malt beverages offered by the supplier; or
- (2) An agreement whereby a supplier grants to a wholesaler a license to use a trade name, trademark, service mark or related characteristic and in which there is a community of interest in the marking of the products of the supplier by lease or otherwise.

(b) Existence of Agreement. – A franchise agreement as described in subsection (a) exists when:

- (1) The supplier has shipped malt beverages to a wholesaler or accepted an order for malt beverages from the wholesaler;
- (2) A wholesaler has paid or the supplier has accepted payment for an order of malt beverages intended for sale within this State;
- (3) The supplier and wholesaler have filed with the Commission a distribution agreement as required by G.S. 18B-1303; or
- (4) A supplier purchases the right to manufacture a malt beverage product, or the trade name for such product, or the right to distribute a product, from another supplier with whom the wholesaler has a franchise agreement.

"§ 18B-1303. Filing of distribution agreement; no discrimination.

(a) Filing. – It is unlawful for a supplier to provide malt beverages to a wholesaler unless a distribution agreement has been filed with the Commission describing the brands of the supplier which such sales may take place. If the supplier sells several brands, the agreement need not apply to all brands. No supplier may provide by a distribution agreement for the distribution of a brand to more than one wholesaler for the same territory. A wholesaler may, however, with the approval of the Commission distribute malt beverages outside his designated territory during periods of temporary service interruption when requested to do so by the supplier and the wholesaler whose service is interrupted.

(b) No Discrimination. – A wholesaler shall service all retail permit holders within his designated territory without discrimination.

(c) No Price Maintenance. – A franchise agreement shall not, either expressly or by implication or in its operation, establish or maintain the resale price of any brand of malt beverages by a wholesaler.

"§ 18B-1304. Prohibitions.

It is unlawful for a supplier, or an officer, agent or representative of a supplier, to:

- (1) Coerce or attempt to coerce or persuade a wholesaler to violate any provision of the ABC laws or rules of the Department of Revenue; or
- (2) Alter in a material way, terminate, fail to renew, or cause a wholesaler to resign from, a franchise agreement with a wholesaler except for good cause and with the notice required by G.S. 18B-1305.

"§ 18B-1305. Cause for termination of franchise agreement.

(a) Meaning of Good Cause. – Good cause for altering or terminating a franchise agreement, or failing to renew or causing a wholesaler to resign from such an agreement, exists when the wholesaler fails to comply with provisions of the agreement which are reasonable, material, not unconscionable, and which are not discriminatory when compared with the provisions imposed, by their terms or in the manner of enforcement, on other similarly situated wholesaler by the supplier. In any dispute over alteration, termination, failure to renew or causing a wholesaler to resign from a franchise agreement, the burden is on the supplier to establish that good cause exists for the action.

(b) Notice of Cause. – At least 90 days before altering, terminating or failing to renew a franchise agreement for good cause, the supplier must give the wholesaler written notice of the intended action and the specific reasons for it. If the cause for the alteration, termination or failure to renew is subject to correction by the wholesaler, and the wholesaler makes such correction within 45 days of receipt of the notice, the notice shall be void.

(c) Termination for Cause without Advance Notice.–A supplier may terminate or fail to renew a franchise agreement for any of the following reasons, and the termination shall be complete upon receipt by the wholesaler of a written notice of the termination and the reason:

- (1) Insolvency of the wholesaler, the dissolution or liquidation of the wholesaler, or the filing of any petition by or against the wholesaler under any bankruptcy or receivership law which materially affects the wholesaler's ability to remain in business.
- (2) Revocation of the wholesaler's State or federal permit or license for more than 30 days.
- (3) Conviction of the wholesaler, or of a partner or individual who owns ten percent (10%) or more of the partnership or stock of the wholesaler, of a felony which might reasonably be expected to adversely affect the goodwill or interest of the wholesaler or supplier. The provisions of this subdivision shall not apply, however, if the wholesaler or its existing partners or stockholders shall have the right to purchase the interest of the offending partner or stockholder, and such purchase is completed within 15 days of the conviction.
- (4) Fraudulent conduct by the wholesaler in its dealings with the supplier or its products.
- (5) Failure of the wholesaler to pay for the supplier's products according to the established terms of the supplier.
- (6) Assignment, sale or transfer of the wholesaler's business or control of the wholesaler without the written consent of the supplier, except as provided in G.S. 18B-1307.

(d) Absence of Good Cause. – Good cause for alteration, termination or failure to renew a franchise agreement does not include:

- (1) The failure or refusal of the wholesaler to engage in any trade practice, conduct or activity which would violate federal or State law.
- (2) The failure or refusal of the wholesaler to take any action which would be contrary to the provisions of this Article.
- (3) A change in the ownership of the supplier or the acquisition by another supplier of the brewery, brand or trade name or trademark, or acquisition of the right to distribute a product, from the original supplier.

"§ 18B-1306. Remedies for wrongful termination.

(a) Injunctive Relief. – A wholesaler whose franchise agreement is altered, terminated or not renewed in violation of this Article may bring an action to enjoin such

unlawful alteration, termination or failure to renew. The action may be brought in the county in which the wholesaler has its principal place of business or in any county in which the wholesaler receives or distributes the products in issue. Any injunction issued pursuant to this subsection shall require the wholesaler to supply the customers in its territory with their reasonable retail requirements and to otherwise serve the territory.

(b) Monetary Damages. – In lieu of injunctive relief, a wholesaler whose franchise agreement is altered, terminated or not renewed in violation of this Article shall be entitled to recover monetary damages from the supplier. The amount to which the wholesaler is entitled shall be the value of the wholesaler's business distributing the supplier's products, including:

- (1) The laid-in costs to the wholesaler of the inventory of the supplier's products, including any State and local taxes paid on the inventory by the wholesaler, plus a reasonable charge for handling of the products upon surrender of the inventory to the supplier.
- (2) The fair market value of all assets, including ancillary businesses of the wholesaler used in distributing the supplier's products. The total compensation to be paid to the wholesaler shall be reduced, however, by any amount received by the wholesaler from sale of assets of the business used in distributing the supplier's products as well as by the value such assets have to the wholesaler unrelated to the supplier's products. 'Fair market value' means the highest dollar amount at which a seller would be willing to sell and a buyer willing to buy at a time prior to the alteration, termination or failure to renew, when each possesses all information relevant to the transaction.

"§ 18B-1307. Transfer of wholesaler's business.

(a) Right of Transfer to Designated Family Member upon Death. – Upon the death of a wholesaler, that individual's interest in the wholesaler business, including the rights under the franchise agreement with the supplier, may be transferred or assigned to a designated family member. The transfer or assignment shall not be effective until written notice is given to the supplier, but the supplier's consent is not required for the transfer or assignment. 'Designated family member' means the deceased wholesaler's spouse, child, grandchild, parent, brother or sister, who is entitled to inherit the deceased wholesaler's ownership interest under the terms of the deceased wholesaler's will or other testamentary device or under the laws of intestate succession. With respect to an incapacitated individual having an ownership interest in a wholesaler, the term 'designated family member' also means the person appointed by the court as the conservator of such individual's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased wholesaler.

(b) Approval of Certain Transfers. – Upon notice to and approval by the supplier, an individual owning an interest in a wholesaler may sell, assign or transfer that interest, including the wholesaler's rights under its franchise agreement with the supplier, to any qualified person. Within 30 days of receipt of notice of the intended sale, assignment or transfer, the supplier shall request any additional relevant, material information reasonably necessary for deciding whether to approve the transaction. The supplier

shall have 30 days from receipt of that information to object to the sale, assignment or transfer. The supplier may object only if the proposed transferee fails to meet qualifications and standards that are nondiscriminatory, material, reasonable and consistently applied to North Carolina wholesalers by the supplier. The burden shall be upon the supplier to prove that the proposed transferee is not qualified.

(c) Damages. – A supplier who disapproves or prevents a proposed assignment or change of ownership in violation of this section shall be liable to the wholesaler who proposed to make the sale, assignment or transfer for the difference between the disapproved sale price and a subsequent actual price of a sale of the same assets completed within a reasonable period. If, however, the proposed transfer or sale was to a business associate at a bargain price, the amount of compensation shall be at least the fair market value of the interest proposed to be sold or transferred, minus the proceeds of an actual sale of the interest completed within a reasonable time.

"§ 18B-1308. Article part of all franchise agreements.

The provisions of this Article shall be part of all franchise agreements as defined in G.S. 18B-1302 and may not be altered by the parties."

Sec. 2. Article 11 of Chapter 18B is amended by adding the following new section at the end of that Article:

"§ 18B-1119. Supplier's financial interest in wholesaler.

(a) A supplier or an officer, director, employee or affiliate of a supplier may financially assist a proposed purchaser in acquiring ownership of a wholesaler's business by participation in a limited partnership arrangement in which the supplier, officer, director, employee or affiliate is a limited partner and the proposed purchaser seeking to acquire ownership of the wholesaler's business is a general partner. Such limited partnership arrangement may exist for no longer than eight years. If the general partner defaults in the agreement with the limited partner, and the limited partner acquires title to the general partner's interest, the limited partner must divest itself of the general partner's interest within 180 days.

(b) A supplier or an officer, director, employee or affiliate of a supplier may financially assist a proposed purchaser in acquiring ownership of a wholesaler's business by making a business loan and taking as security the assets of the wholesaler's business. The business loan may exist for no longer than eight years. If the wholesaler defaults on the loan and it is necessary for the supplier to take title to the assets of the business, the supplier may operate the business for a period not to exceed 180 days, by which time the supplier must divest itself of the business. The supplier may make the subsequent purchaser a business loan, taking as security the assets of the wholesaler's business. It shall also be permissible for the wholesaler and supplier to agree on the sale of the wholesaler's business to the supplier, provided that the supplier shall divest itself of the wholesaler's business within 180 days.

(c) A supplier or an officer, director, employee or affiliate of a supplier may have a security interest in the inventory or property of its wholesaler to secure payment for such inventory or other loans for other purposes."

Sec. 3. G.S. 18B-1109(b) and G.S. 18B-1117 are repealed.

Sec. 4. This act is effective upon ratification and shall apply to all franchise agreements in existence at that time.

In the General Assembly read three times and ratified this the 25th day of May, 1989.