



AN ACT CLARIFYING AMBIGUITIES IN THE BEER FRANCHISE LAW; REAFFIRMING THE CORE PURPOSES OF THE ALCOHOLIC BEVERAGE CODE IN RELATION TO THE TWENTY-FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION; CLARIFYING THE NONWAIVER NATURE OF THE PROVISIONS OF THE BEER FRANCHISE LAW; CLARIFYING THAT JUST CAUSE REQUIRES THAT THE WHOLESALER FAILED TO COMPLY WITH THE REASONABLE CONTRACTUAL REQUIREMENTS OF THE BREWER; CLARIFYING THAT THE APPOINTMENT OF A WHOLESALER TO A BRAND IN AN EXCLUSIVE TERRITORY IS NOT AFFECTED BY A TRANSFER OF OWNERSHIP OF THE MANUFACTURER OF THAT BRAND; PROVIDING THAT THE BEER FRANCHISE LAW MUST BE LIBERALLY CONSTRUED; AMENDING SECTIONS 16-1-101, 16-3-221, AND 16-3-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 16-1-101, MCA, is amended to read:

"16-1-101. Citation -- declaration of policy -- subject matters of regulation. (1) Chapters 1 through 4 and 6 of this title may be cited as the "Montana Alcoholic Beverage Code".

(2) It is the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale, importation, and distribution of alcoholic beverages within the state subject to the authority of the state acting through the department.

(3) This code is an exercise of the police power of the state for the protection of the welfare, health, peace, morals, and safety of the people of the state and of the state's power under the 21st amendment to the United States constitution to control the transportation and importation of alcoholic beverages into the state. The overall purposes of this code under the 21st amendment to the United States constitution are to promote temperance, create orderly markets, and aid in the collection of taxes. The provisions of this code must be broadly construed to accomplish these purposes."

Section 2. 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:

~~(1)~~(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 rules promulgated by the department;

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

~~(3)~~(c) designate or allow more than one wholesale distributor to sell or distribute a specific brand of the brewer's or beer importer's products to retail licensees in the same area, provided that nothing in this part prohibits the brewer or beer importer from designating more than one wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area;

~~(4)~~(d) fix or maintain the price at which a wholesale distributor resells the brewer's or beer importer's products. Without limitation, it is a violation of this section if:

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

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

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

~~(5)~~(e) cancel, ~~or terminate~~, discontinue, or fail to renew, except for just cause ~~or~~ and in accordance with the current terms and standards established by the brewer or beer importer then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or entered into after that date to sell beer manufactured by the brewer or imported by the beer importer. A brewer or beer importer may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer or beer importer cancels or terminates a wholesaler's franchise, the brewer or beer importer has the burden of proving that the classification was reasonable and not arbitrary. ~~After July 1, 1974,~~

~~the~~ The provisions of 16-3-221 through 16-3-226 must be a part of any franchise, contract, agreement, or understanding, whether written or oral, between any wholesaler of beer licensed to do business in this state and any manufacturer or beer importer doing business with the licensed wholesaler just as though the provisions had been specifically agreed upon between the wholesaler and the manufacturer or beer importer. A wholesaler of beer licensed to conduct business in the state may not waive any of the protections or agree to any provision contrary to 16-3-221 through 16-3-226, by any conduct, including but not limited to the signing of any contract or agreement with terms contrary to those provisions.

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

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

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

Section 3. Section 16-3-222, MCA, is amended to read:

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

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

- (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;
- (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 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0395, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2009.

Speaker of the House

Signed this _____ day
of _____, 2009.

SENATE BILL NO. 395
INTRODUCED BY GEBHARDT

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