

H. B. 2949

(By Delegate Hunt)

[Introduced March 15, 2013; referred to the
Committee on the Judiciary then Finance.]

10 A BILL to amend and reenact §60-8-30 of the Code of West Virginia,
11 1931, as amended, relating to making it illegal for a
12 manufacturer, winery, farm winery or supplier to deliver wine
13 to a distributor without having an equitable franchise
14 agreement; requiring the agreement to contain a written
15 description of the territory the wine supplier assigns to the
16 distributor; prohibiting a distributor from selling wine
17 outside its franchise territory; permitting sales of
18 convenience between distributors; prohibiting a retailer from
19 purchasing wine from sellers outside the retailer's assigned
20 territory; requiring due regard for the equities and just
21 cause before an agreement between a supplier and distributor
22 may be canceled; requiring ninety days written notice when
23 seeking to cancel an agreement; providing exceptions;
24 requiring sixty days written notice when a distributor desires

1 to sell or transfer ownership; providing that a supplier has
2 sixty days to respond; requiring a supplier who disapproves of
3 the transfer to give written justification; and providing that
4 if no response is received the transfer is approved by
5 default.

6 *Be it enacted by the Legislature of West Virginia:*

7 That §60-8-30 of the Code of West Virginia, 1931, as amended,
8 be amended and reenacted to read as follows:

9 **ARTICLE 8. SALE OF WINES.**

10 **§60-8-30. Exclusive franchise agreements prohibited.**

11 It ~~shall be~~ is illegal for any manufacturer, winery, farm
12 winery or supplier to ~~enter into any exclusive franchise agreement~~
13 ~~with any distributor whereby any such distributor is given the~~
14 ~~exclusive right within this state or in any given territory within~~
15 ~~this state to distribute the product or products of such~~
16 ~~manufacturer which are to be sold or distributed pursuant to the~~
17 ~~provisions of this article.~~ transfer or deliver to a distributor
18 any wine without first having entered into an equitable franchise
19 agreement with the distributor. Further, all agreements between a
20 manufacturer, winery, farm winery or supplier and a distributor
21 must be in writing and on file with the commissioner and all ~~such~~
22 agreements must ~~provide for termination of either party provided~~
23 ~~that notice of termination is~~ include a written description showing
24 the assigned territory by the supplier to the distributor. This

1 requirement does not prohibit a distributor from receiving multiple
2 territorial assignments. A distributor may not sell, offer for
3 sale, distribute or deliver any wine outside the territory assigned
4 to the distributor by the supplier of the wine or sell, offer for
5 sale, distribute or deliver any wine to any licensed retailer whose
6 principal place of business or licensed premises is within the
7 assigned territory of another distributor of wine. However, this
8 section does not prohibit sales of convenience between distributors
9 licensed in this state where one distributor sells, transfers or
10 delivers to another distributor a particular brand or brands for
11 sale at wholesale. No licensed retailer may purchase wine except
12 from the duly authorized distributor in whose assigned territory
13 the licensed retailer is located.

14 Agreements may not be canceled, terminated or rescinded
15 without due regard for the equities of the supplier or distributor
16 and without just cause. Notice of the cancellation, termination or
17 rescission of a franchise agreement by either party must be
18 provided in writing and by certified mail to the commissioner and
19 all parties to the agreement ninety days prior to the termination
20 date. Once the notice has been received by either party, the
21 distributor shall: (1) Use the ninety-day period to deplete ~~such~~
22 the distributor's affected wine inventory; or (2) reach some
23 agreement with the manufacturer, winery, farm winery or supplier to
24 return unused salable wine inventory or receive payment for unused

1 salable wine inventory. No new distributor shall be appointed
2 until the conclusion of the ninety days or as the parties have
3 otherwise agreed to complete the termination. For the purposes of
4 this article, "salable" shall mean inventory fit for human
5 consumption or as otherwise determined by the commissioner.
6 However, that ninety-day period and the notice of cancellation,
7 termination or rescission does not apply if the cancellation,
8 termination or rescission is agreed to in writing by both the
9 supplier and the distributor involved or, in the event a
10 distributor desires to sell or transfer his or her franchise, the
11 distributor shall give to the supplier at least sixty days notice
12 in writing of the impending sale or transfer and the identity of
13 the person, firm or corporation to whom the impending sale or
14 transfer and the identity of the person, firm or corporation to
15 whom the sale or transfer is to be made and the other information
16 as the supplier may reasonable request. A copy of the notice of
17 sale or transfer shall be forwarded to the commissioner. The
18 supplier shall be given sixty days to approve or disprove of the
19 sale or transfer. If the supplier neither approves nor disapproves
20 the sale or transfer within sixty days of the date of receipt of
21 the notice, the sale or transfer of the franchise shall be deemed
22 to be approved by the supplier. In the event the supplier
23 disapproves the sale or transfer to the prospective franchises,
24 transferee or purchaser, the supplier shall give written notice to

1 the distributor, setting forth the reasons for the disapproval.

NOTE: The purpose of this bill is to make it illegal for a winery or wine supplier to deliver wine to a distributor without first having an equitable franchise agreement. The bill requires the agreement to contain a written description of the assigned territory; The bill prohibits a distributor from selling wine outside of its franchise territory. The bill permits sales of convenience between distributors. The bill prohibits retailers from purchasing wine from sellers outside its assigned territory. The bill requires due regard for the equities and just cause before an agreement between a supplier and distributor may be canceled. The bill requires ninety days written notice when seeking to cancel an agreement. The bill provides exceptions. The bill requires sixty days' written notice when a distributor desires to sell or transfer ownership. The bill provides a supplier with sixty days to respond. The bill requires a supplier who disapproves of the transfer to give written justification. The bill provides that if no response is received the transfer is approved by default.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.