

SENATE FILE NO. SF0079

Malt beverage franchise agreements.

Sponsored by: Senator(s) Barlow, Baldwin, Boner, Landen and  
Nethercott and Representative(s) Andrew,  
Brown, Newsome and Olsen

A BILL

for

1 AN ACT relating to malt beverages; providing a process for  
2 specified malt beverage manufacturers to terminate  
3 franchise agreements with malt beverage distributors  
4 without cause; providing for compensation to the  
5 distributor; providing for arbitration; specifying  
6 applicability; and providing for an effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 12-9-120 is created to read:

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12 **12-9-120. Terminating a franchise agreement without**  
13 **cause; compensation; arbitration; applicability.**

14

1           (a) This section shall only apply to a franchise in  
2 which the franchisor annually produces twenty-five thousand  
3 (25,000) barrels of malt beverages in aggregate or less,  
4 including the production of malt beverages by any  
5 affiliate. For purposes of this section, malt beverages  
6 produced for a franchisor under a brand owned or controlled  
7 by the franchisor shall be attributed to the franchisor and  
8 not to the brewer producing the malt beverages for the  
9 franchisor.

10

11           (b) Notwithstanding any agreement or other provision  
12 of law, a franchise governed by this section may be  
13 terminated, not renewed, canceled or discontinued by the  
14 franchisor for any reason or no reason upon not less than  
15 forty-five (45) days written notice of the effective date  
16 of the termination, cancellation, nonrenewal or  
17 discontinuance of the franchise. Upon the effective date of  
18 any termination, cancellation, nonrenewal or discontinuance  
19 by a franchisor under this section, the franchisee shall be  
20 entitled to the following compensation:

21

1           (i) The fair market value, as defined in W.S.  
2 12-9-115(c), of the terminated, cancelled, not renewed or  
3 discontinued franchise; and

4  
5           (ii) The repurchase of all the franchisor's  
6 merchantable product at an amount equal to the laid-in cost  
7 of the franchisee's inventory of the franchisor's products  
8 that are in the franchisee's warehouse or in transit to the  
9 franchisee. Unmerchantable products shall be disposed of in  
10 accordance with the preexisting agreement of the parties  
11 or, if no agreement exists, shall be disposed of with the  
12 franchisor and franchisee sharing equally in the costs of  
13 disposal.

14  
15           (c) If the franchisor and franchisee have not agreed  
16 to the reasonable compensation as provided under subsection  
17 (b) of this section upon the effective date of the  
18 termination, cancellation, nonrenewal or discontinuance of  
19 the franchise, then on or before the termination date the  
20 franchisor shall pay the franchisee a good faith estimate  
21 of compensation due under this section, including a good  
22 faith estimate of fair market value. The franchisee shall

1 make merchantable inventory available for pickup by the  
2 franchisor or its designee.

3

4 (d) If the franchisee believes that the payment made  
5 by the franchisor under subsection (c) of this section was  
6 less than the compensation due under subsection (b) or (e)  
7 of this section or if no payment is made, the franchisee  
8 may, within forty-five (45) days of the effective date of  
9 the termination, cancellation, nonrenewal or discontinuance  
10 of the franchise, submit the question of compensation due  
11 to final and binding arbitration in accordance with the  
12 following:

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14 (i) The manner of arbitration under this section  
15 shall be the manner agreed upon by the parties or, in the  
16 absence of an agreement, the arbitration shall proceed  
17 before a panel of three (3) arbitrators selected in  
18 accordance with the commercial rules of the American  
19 Arbitration Association;

20

21 (ii) If the arbitration concludes that the  
22 payment made by the franchisor to the franchisee upon  
23 termination was less than the compensation due under

1 subsection (b) of this section, the franchisor shall pay  
2 the franchisee any additional amount of determined  
3 compensation, plus interest. If the arbitration concludes  
4 that the payment made by the franchisor to the franchisee  
5 upon termination was more than the compensation due by  
6 reason of the termination, the franchisee shall repay any  
7 determined overpayment to the franchisor, plus interest;

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9 (iii) All arbitration fees and expenses shall be  
10 equally divided among the parties to the arbitration unless  
11 the arbitration determines that the franchisor's payment  
12 under subsection (c) of this section was not a good faith  
13 estimate of the compensation due in which event the  
14 arbitration may award up to one hundred percent (100%) of  
15 the arbitration costs to the franchisee;

16

17 (iv) The arbitration shall be final and binding  
18 and shall fully resolve the issue of compensation due to  
19 the franchisee from the franchisor under this section.

20

21 (e) Notwithstanding any other provision of this  
22 section, by written mutual agreement, regardless of whether  
23 the agreement existed before or after the termination,

1 cancelation, nonrenewal or discontinuance of a franchise  
2 under this section, the franchisor and the franchisee may  
3 establish a method or formula for compensating a franchisee  
4 under this section.

5

6 (f) This section shall be effective on July 1, 2024.

7 This section shall apply to:

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9 (i) All franchise agreements entered on or after  
10 July 1, 2024;

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12 (ii) Any franchise in existence on July 1, 2024  
13 upon the amendment or renewal of the franchise. For  
14 purposes of this paragraph, if a franchise has an  
15 indefinite duration or has a duration of one (1) year or  
16 more after July 1, 2024 the franchise shall be deemed to be  
17 renewed on July 1, 2025.

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19 **Section 2.** W.S. 12-9-104(a)(iv), 12-9-105(a)(intro)  
20 and 12-9-118(a) and (e) are amended to read:

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22 **12-9-104. Unfair and prohibited acts.**

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1 (a) It shall be a violation of this act for a  
2 manufacturer or manufacturer's officer, agent or other  
3 representative thereof:

4  
5 (iv) Except as provided in W.S. 12-9-120, to  
6 terminate, cancel, fail to renew or refuse to continue the  
7 franchise of any distributor without good cause, as defined  
8 in this act. The nonrenewal of a franchise or selling  
9 agreement without good cause shall constitute an unfair  
10 termination or cancellation, regardless of the specified  
11 time period of the franchise or selling agreement;

12  
13 **12-9-105. Distributor's resignation; cancellation;**  
14 **termination; failure to renew; refusal to continue.**

15  
16 (a) Notwithstanding any agreement and except as  
17 ~~otherwise~~ provided for in W.S. 12-9-120 or as otherwise  
18 provided in this act, a manufacturer shall not cause a  
19 distributor to resign from an agreement, or cancel,  
20 terminate, fail to renew or refuse to continue under an  
21 agreement unless the manufacturer has:

22  
23 **12-9-118. Repurchase of inventory upon termination.**

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2 (a) Except as otherwise provided in W.S. 12-9-120,  
3 whenever any malt beverage distributor enters into a  
4 franchise agreement with a manufacturer in which the  
5 distributor agrees to maintain an inventory of malt  
6 beverages and the franchise is subsequently terminated, the  
7 manufacturer shall repurchase the inventory as provided in  
8 this ~~act~~-section. If the distributor has any outstanding  
9 debts to the manufacturer, then the repurchase amount may  
10 be credited to the distributor's account.

11

12 (e) If any manufacturer shall fail or refuse to  
13 repurchase any inventory covered under the provisions of  
14 this ~~act~~-section within sixty (60) days after termination  
15 of a distributor's contract, he shall be civilly liable for  
16 one hundred percent (100%) of the current wholesale price  
17 of the inventory plus any freight charges paid by the  
18 distributor, the distributor's reasonable attorney's fees,  
19 court costs and interest on the current wholesale price  
20 computed at the legal interest rate.

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