Beer Franchise Law: Can Brewers and Distributors Craft a Resolution?

BY ANDREW C. BARTHOLOMEW • FEBRUARY 27, 2018

Three bills aimed at reforming Massachusetts' controversial beer franchise law failed to make it out of committee this month, frustrating the efforts of brewers and beer distributors alike. Both sides will now go back to the drawing board to craft a resolution to a dispute in which the industry has been embroiled for nearly a decade.

The problem arose from what many view as an outdated law. Under G. L. c. 138, § 25E, a brewer that has sold its beer to a distributor for a period of six months cannot refuse to continue to sell to that distributor without good cause. This bill was written at a time when there were far more distributors than brewers, and it was intended to protect the vulnerable distributors from the whims of powerful, national beer brands that could end those relationships at any point and put the distributors out of business. However, the ratio has now flipped, as there are less than a dozen distributors in Massachusetts compared to hundreds of beer brands. Under the current statutory framework, a small brewery can get locked into a detrimental relationship with a distributor and may be unable to leave, as "good cause" has proven to be a difficult standard to meet.

In an effort to amend this law, the distributors had supported House Bill 2823, which would have allowed breweries that produced less than 30,000 barrels a year to change distributors at will. Although the distributors touted this change as "The 97% Solution," as it would have applied to most breweries, brewers argued that the bill would have discouraged growth because breweries that exceeded that 30,000 barrel benchmark would remain subject to the current law. This includes some of the Commonwealth's most popular craft beer brands.

Brewers had instead advocated for two separate bills. House Bill 183 would have allowed breweries whose brands accounted for less than 20% of a distributor's total annual sales to freely terminate their contracts, provided they compensated the distributors for the fair market value of the loss of business. Senate Bill 136 would have governed relationships between brewers and distributors pursuant to the parties' agreement and the law of contracts, just like other industries, making it easier for brewers to change distributors when necessary.

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Despite the recent stumbling block, both sides have expressed a desire to collaborate and develop rules that benefit all parties involved. The current Massachusetts legislative session will end on July 31, so there's still a chance for progress to be made in the near future.

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