

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4
5 By: Senator Everett

A Bill

SENATE BILL 261

For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED TITLE 3,
10 CHAPTER 2, SUBCHAPTER 4 CONCERNING ALCOHOLIC BEVERAGES;
11 AND FOR OTHER PURPOSES."

Subtitle

13 "TO AMEND ARKANSAS CODE ANNOTATED TITLE
14 3, CHAPTER 2, SUBCHAPTER 4 CONCERNING
15 ALCOHOLIC BEVERAGES"
16

17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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20 SECTION 1. Arkansas Code Annotated Title 3, Chapter 2, Subchapter 4 is
21 amended to read as follows:

22 "3-2-401. Purpose.

23 This subchapter is promulgated pursuant to the authority granted to the
24 State of Arkansas pursuant to the provisions of the Twenty-First Amendment to
25 the United States Constitution specifically for the following purposes:

26 (1) To prevent unfair business practices, discrimination, and undue
27 control of ~~such~~ wholesalers by ~~distillers, manufacturers, importers,~~ and
28 producers of vinous beverages;

29 (2) To maintain stability and healthy competition in the alcoholic
30 beverage industry;

31 (3) To promote and maintain a sound and stable system of distribution
32 of alcoholic beverages; and

33 (4) To promote the public health, safety, and welfare.

34 3-2-402. Scope of subchapter.

35 This subchapter does not repeal or supersede any of the provisions of
36 §§ 3-5-1101 - 3-5-1111 and to the extent of any conflict, the provisions of

1 §§ 3-5-1101 - 3-5-1111 shall prevail.

2 3-2-403. ~~Spirituos and vinous~~ Vinous beverages - Registration of brands
3 and labels - Designation of licensed wholesaler.

4 Every ~~manufacturer,~~ importer, or producer of ~~spirituous and~~ vinous
5 beverages, as defined by § 3-1-102, doing business in the State of Arkansas
6 shall submit to the Alcoholic Beverage Control Division one (1) label for each
7 brand of ~~spirituous and~~ vinous beverages to be shipped for the first time by
8 the shipper into or within the state and shall designate in the application
9 for registration one (1) licensed liquor wholesaler in the state, who shall be
10 the exclusive distributor of such brand or label within the state. Such
11 designated wholesaler shall be initially approved by the director and shall
12 not be changed or initially disapproved except for good cause, and the
13 director shall determine good cause after a hearing pursuant to the provisions
14 set out in this subchapter. Any brands or labels previously registered in
15 this state, and which have subsequently been withdrawn from distribution in
16 this state, shall be treated in the same manner as the initial registration of
17 brands or labels and are subject to the provisions hereof.

18 3-2-404. Request to change wholesalers - Contents of application.

19 Any ~~distiller, manufacturer,~~ importer, or producer of vinous beverages
20 desiring to change wholesalers with respect to any brand shall file with the
21 director a wholesaler change request containing such of the following
22 information as is applicable:

- 23 (1) The name of each brand involved;
24 (2) The case volume in Arkansas for each brand for the current year or
25 portion thereof and the two (2) previous calendar years;
26 (3) The name of the wholesaler currently distributing such brand;
27 (4) The name of the proposed new wholesaler; and
28 (5)(A) A detailed explanation of the specific business reasons for the
29 request to change wholesalers.

30 (B) Business reasons which may be considered by the director in
31 determining good cause for authorizing a change of wholesalers will include:

- 32 (i) A wholesaler's bankruptcy or serious financial
33 instability, including its consistent failure to pay its debts as they fall
34 due or its failure to meet or maintain any objective standards of
35 capitalization expressly agreed to between the wholesaler and the ~~distiller,~~
36 ~~manufacturer,~~ importer, or producer of vinous beverages, provided such

1 standards are determined by the director to be commercially reasonable;

2 (ii) A wholesaler's repeated violations of any provision of
3 federal or state law or regulations, whether or not such violations resulted
4 in official action;

5 (iii) A wholesaler's failure to maintain reasonable sales
6 volume of the brand, taking into consideration such factors as the extent of
7 the ~~distiller's, manufacturer's, importer's, or producer's~~ advertising and
8 promotion of the particular brand conducted by the importer or producer of
9 vinous beverages, prevailing economic conditions affecting sales generally, or
10 the extent of the wholesaler's efforts, or lack thereof, to promote a
11 particular brand; and

12 (iv) Any other factors relevant to such proposed change and
13 which aid the director in determining good cause.

14 3-2-405. Request to change wholesalers - Notice - Objections - Hearing -
15 Disposition of proceedings.

16 (a)(1) At the same time that the original wholesaler change request is
17 filed with the director, a copy thereof shall be mailed by the ~~distiller,~~
18 ~~manufacturer,~~ importer, or producer of vinous beverages to each wholesaler who
19 may be affected by the proposed changes. Immediately upon receipt of any
20 wholesaler change request, the director shall notify the currently designated
21 wholesaler of the request by certified mail.

22 (2) Within fifteen (15) days after receipt of such notice by the
23 affected wholesaler, any such wholesaler or party required to be given notice
24 by this subchapter may interpose written objections thereto. Such written
25 objections shall be filed in the office of the Alcoholic Beverage Control
26 Division and copies thereof shall be served by the objecting party upon the
27 party proposing the change and upon all wholesalers who may be affected by the
28 proposed change.

29 (b) Upon the receipt of an objection from any party, or upon his own
30 motion, the director shall hold a hearing, after providing due notice to all
31 parties concerned, for the purpose of determining the truth of any matters of
32 fact alleged by any party and determining whether the proposed changes are
33 based upon sufficient cause and are otherwise consistent with the policies set
34 out in § 3-2-401. If it is determined from the evidence educed at said
35 hearing that the brand or label involved is the same as, or similar to, or is
36 such a modification of, substitution of, upgrade of, or extension of a brand

1 or label which has already been registered by the ~~distiller, manufacturer,~~
2 ~~importer,~~ or producer of vinous beverages, so as to render it unjust or
3 inequitable, without cause being shown, to designate the brand or label to a
4 wholesaler different from the wholesaler designated for the brand or label
5 being so modified, substituted, upgraded, or extended, then such request shall
6 be denied; provided, however, that nothing herein shall be construed or
7 prevent the ~~distiller, manufacturer,~~ importer, or producer of vinous beverages
8 from treating the matter as a desire to change wholesalers and from proceeding
9 under the provisions of § 3-2-404, either before or after such determination.

10 (c) No proposed change will be approved by the director which is based
11 upon the failure or refusal of a wholesaler to comply with any demand or
12 request of a ~~distiller, manufacturer,~~ an importer, or producer of vinous
13 beverages where such demand or request would result in a violation of any
14 provision of federal or state law or regulation. During such fifteen-day
15 objection period, or until the proposed changes have been finally approved by
16 the director, the party proposing the change shall continue to supply the
17 designated wholesaler, upon commercially reasonable terms, such reasonable
18 quantities of the brand involved as the wholesaler may require. If, at any
19 time, the director finds a ~~distiller, manufacturer,~~ an importer, or producer
20 is not shipping the wholesaler a reasonable amount of merchandise, he may
21 withdraw approval of all brands registered by such parties within the state.

22 3-2-406. Request to change wholesalers - Hearing - Time - Findings -
23 Appeal.

24 (a) Any hearing held by the director pursuant to the provisions of
25 § 3-2-405, shall be held within thirty (30) days after the receipt of any
26 notice of objection to a wholesaler change request.

27 (b) The findings of the director made after such hearing shall be
28 presented to the Alcoholic Beverage Control Board at its next regularly
29 scheduled meeting.

30 (c) Any aggrieved party may appeal the decision of the director to the
31 full board to be heard de novo and any such appeal hearing will be scheduled
32 and held pursuant to hearing procedures established for the Alcoholic Beverage
33 Control Division by state law and Alcoholic Beverage Control Division
34 regulations.

35 3-2-407. Request to change wholesalers - Automatic approval.

36 If no objection is filed to the wholesaler change request as provided in

1 § 3-2-406, the proposed changes shall stand automatically approved by the
 2 director at the expiration of such fifteen-day period, conditioned upon the
 3 ~~manufacturer or importer or producer of vinous beverages~~ repurchasing all
 4 inventory of the subject brand from the previously designated wholesaler at
 5 such wholesaler's laid-in cost.

6 3-2-408. Acquisition of right to sell, ship, or distribute a label.

7 Any ~~distiller, manufacturer, importer, or producer of vinous beverages~~
 8 who obtains or acquires in any manner the right to sell, ship, or distribute
 9 any label shall for the purpose of this subchapter stand in place of, and be
 10 subject to, all rights, privileges, and duties and obligations, of its
 11 predecessor or its predecessors, from whom such brands or labels were obtained
 12 or acquired.

13 3-2-409. Beer, malt products, or light wine.

14 (a) Every manufacturer or importer of beer or other malt products or
 15 light wine doing business in the State of Arkansas shall submit to the
 16 Alcoholic Beverage Control Division one (1) label for each brand of beer or
 17 malt product or light wine to be shipped for the first time into or within the
 18 state and shall designate within the application for registration any number
 19 of wholesalers in the state, each of whom shall be the exclusive distributor
 20 of such brand within the geographical territory assigned by the manufacturer
 21 or importer to such wholesaler.

22 (b) Transfers of brands of malt products or light wine or changes in
 23 geographical distribution areas assigned shall not be subject to the
 24 provisions set out above for ~~spirituous or~~ vinous products, so long as any
 25 such manufacturer or importer has complied with the filing provisions of
 26 applicable law.

27 3-2-410. Terms and conditions of agreements with wholesaler binding on
 28 successor.

29 A successor to a ~~distiller, manufacturer, an~~ importer, producer, winery,
 30 or brewer of beer, malt liquor, light wine, or wine, ~~or liquor~~ that continues
 31 in business as a ~~distiller, manufacturer, an~~ importer, producer, winery, or
 32 brewery or that continues to operate under the names of any product acquired
 33 by said ~~distiller, manufacturer, importer, producer, winery, or brewer~~ shall
 34 be bound by all terms and conditions of any agreements with any Arkansas
 35 wholesaler, whether oral or written, of the ~~distiller, manufacturer, importer,~~
 36 producer, winery, or brewery which are in effect on the date of succession.

1 3-2-411. Subchapter incorporated into division approvals - Applicability
2 - Waiver.

3 (a) The terms, conditions, and requirements of this subchapter are
4 hereby expressly made a part of the terms of and as conditions to the approval
5 granted by the Alcoholic Beverage Control Division to ~~distillers,~~
6 ~~manufacturers,~~ importers, or producers, to do business in the state, and by
7 the application for, the acceptance of, or the conduct of business under any
8 such approval, ~~a distiller, manufacturer, an importer,~~ or producer consents
9 and agrees to comply with the terms, conditions, and requirements of this
10 subchapter.

11 (b) This subchapter does not apply to manufacturers or wholesalers of
12 Arkansas native wine.

13 (c) No right, duty, or other provision set out in this subchapter may
14 be waived by any agreement or contract between any wholesaler and supplier
15 regardless of whether any such waiver agreement was made prior to or after
16 July 15, 1991.

17 3-2-412. Dual distributorship prohibited.

18 (a)(1) The creation of a dual distributorship is prohibited.

19 (2) An unlawful dual distributorship is created whenever any
20 ~~manufacturer~~ importer or producer of vinous or malt beverages designates as
21 its distributor more than one (1) Arkansas ~~liquor~~ wholesaler in the state or
22 wholesale beer permit holder to distribute the same brand of alcoholic
23 beverage in the same geographical territory: city; county; counties; or state.

24 (b) In addition to any remedies to any aggrieved party authorized by
25 law, the director may withdraw approval of any and all brands registered by
26 any ~~manufacturer~~ importer or producer of vinous or malt beverages found to be
27 in violation of this subchapter, such findings to be made after hearing
28 pursuant to hearing procedures established for the Alcoholic Beverage Control
29 Division by state law and administrative regulations.

30 (c) For the purpose of this subchapter, a brand is defined as the
31 same product or substantially the same product as evidenced by the product
32 label that must be filed with the Alcoholic Beverage Control Division.
33 Identical or substantially identical labels will be considered and treated as
34 the same brand."

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36 SECTION 2. All provisions of this act of a general and permanent nature

1 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
2 Revision Commission shall incorporate the same in the Code.

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4 SECTION 3. If any provision of this act or the application thereof to
5 any person or circumstance is held invalid, such invalidity shall not affect
6 other provisions or applications of the act which can be given effect without
7 the invalid provision or application, and to this end the provisions of this
8 act are declared to be severable.

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10 SECTION 4. All laws and parts of laws in conflict with this act are
11 hereby repealed.

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