



AT THE BAR WITH BOWDITCH

A Legal Blog for the Craft Brewing Community

Will Massachusetts Lawmakers Level The Playing Field Between Small Brewers And Distributors?

BY AIVI NGUYEN • JULY 14, 2016

Back in January, 2015, a petition along with a [draft bill, Bill 245](#), came before the Massachusetts legislature for consideration. The proposed bill which is an amendment to an already existing bill, if approved, will change the way relationships between small brewers and distributors operate. The bill creates a standard by which small brewers are allowed to terminate their relationships with distributors, outside of the terms written in a distribution contract and different from the requirements placed upon larger breweries.

As of today, a brewer may only refuse to sell beer to a distributor if the distributor breaches whatever contract they have written between them. However, oftentimes, these contracts are drafted by huge distributors and the terms are not favorable to brewers, especially small brewers who are just trying to get their foot in the door and who were probably willing to sign anything.

Or even worse still, sometimes there is no contract between the brewer and the distributor and the relationship is governed by a decades-old franchise law.

Bill 245 is an attempt to level the power dynamic in those distribution relationships.

The bill proposes a carve out for small brewing relationships, which are defined as relationships where the sale of products to a distributor does not exceed 20% of the distributor's total sales in the prior year.

The language of the proposed bill remains unchanged with respect to large breweries, who may refuse to sell to a distributor only for good cause shown if that brewer had made regular sales to the distributor within the last 6 months. This means that a large brewer cannot simply refuse to sell to a distributor that it routinely sold to, for no good reason.

A large brewer must still give the distributor and the ABCC 120 days' notice of its intention to discontinue sales and the notice must include the specific reasons for the discontinuance. The distributor may appeal the discontinuance and

have a hearing before the ABCC, where the brewer has to prove it had good cause to terminate the relationship.

Good cause is defined as actions such as the following: disparaging the product; unfair preferential treatment to competitor's products; failing to use best efforts to promote the product; engaging in improper trade practices; or failing to comply with the terms of sale in the contract.

The bill gives much more leeway to a small brewer to end a distribution relationship.

A small brewer still must show good cause to terminate a relationship with a distributor, but a small brewer need only give the distributor 30 days' notice that it will discontinue sales. The brewer does need to have a new distributor lined up who will pay the first distributor the fair market value of their distribution rights. But, the brewer can still refuse to sell to the first distributor after 30 days' notice, even if the successor distributor has not paid the first distributor yet.

It is clear that the purpose of the bill is to allow small brewers to get out of one-sided relationships where their product is being pushed aside or ignored. The bill is a direct response to the pay-for-play drama that has allegedly plagued the industry in Massachusetts.

The bill is being debated today and we are supposed to hear the results tomorrow.