

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

February 27, 2020

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 1681

By: Leewright

[alcoholic beverages - termination of distribution
agreements - effective date]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 81, Chapter 366, O.S.L. 2016, as amended by Section 16, Chapter 364, O.S.L. 2017 (37A O.S. Supp. 2019, Section 3-111), is amended to read as follows:

Section 3-111. A. ~~Except as provided in subsection F of this section, a small brewer is not subject to the termination provisions of this section.~~

~~B.~~ 1. Except as provided in subsections ~~C, D~~ B, C, D and E of this section, no brewer shall terminate a distributor agreement with any beer distributor unless all of the following occur:

a. the brewer establishes good cause for such termination,

b. the beer distributor receives written notification by certified mail, return receipt requested, from the brewer of the alleged noncompliance and is afforded no

1 less than sixty (60) days in which to cure such
2 noncompliance. If not capable of being cured within
3 the sixty-day period, the beer distributor shall begin
4 the cure within the sixty-day period and diligently
5 pursue the cure as promptly as feasible,

6 c. the beer distributor fails to cure such noncompliance
7 within the allotted cure period, and

8 d. the brewer provides written notice by certified mail,
9 return receipt requested, to the beer distributor of
10 such continued noncompliance. The notification shall
11 contain a statement of the intention of the brewer to
12 terminate the distributor agreement, the reasons for
13 the termination and the date the termination shall
14 take effect.

15 2. If a beer distributor cures an alleged noncompliance within
16 the cure period provided in subparagraph b of paragraph 1 of this
17 subsection, any notice of termination from a brewer to a beer
18 distributor shall be null and void.

19 ~~C.~~ B. A brewer may immediately terminate a distributor
20 agreement, effective upon furnishing written notification to the
21 beer distributor by certified mail, return receipt requested, for
22 any of the following reasons:
23
24

1 1. The beer distributor's failure to pay any account when due
2 and upon written demand by the brewer for such payment, in
3 accordance with agreed payment terms;

4 2. The assignment or attempted assignment by the beer
5 distributor for the benefit of creditors, the institution of
6 proceedings in bankruptcy by or against the beer distributor, the
7 dissolution or liquidation of the beer distributor or the insolvency
8 of the beer distributor;

9 3. The revocation or suspension of, or the failure to renew for
10 a period of more than fourteen (14) days, a beer distributor's
11 state, local or federal license or permit to sell beer in this
12 state;

13 4. The beer distributor has been convicted of a felony that, in
14 the brewer's sole judgment, adversely affects the goodwill of the
15 beer distributor or brewer;

16 5. A beer distributor has been convicted of, found guilty of or
17 pled guilty or nolo contendere to, a charge of violating a law or
18 regulation of the United States or of this state if it materially
19 and adversely affects the ability of the beer distributor or brewer
20 to continue to sell its beer in this state;

21 6. Any attempted transfer of ownership of the beer distributor,
22 stock of the beer distributor or stock of any parent corporation of
23 the beer distributor, or any change in the beneficial ownership or
24 control of any entity having control of the beer distributor,

1 without obtaining the prior written approval of the brewer, which
2 may not be unreasonably withheld, except as may otherwise be
3 permitted pursuant to a written agreement between the parties;

4 7. Fraudulent conduct in the beer distributor's dealings with
5 the brewer of beer, including the intentional sale of beer outside
6 the brewer's established quality standards;

7 8. Cessation of the beer distributor to conduct business for
8 five (5) consecutive business days, unless conducting the business
9 is prevented or rendered impractical due to events beyond the
10 distributor's reasonable control as a result of an act of God, an
11 insured casualty, war or a condition of national, state or local
12 emergency; or

13 9. Any sale of beer, directly or indirectly, to customers
14 located outside the territory assigned to the beer distributor by
15 the brewer unless expressly authorized by the brewer.

16 Provided, the beer distributor shall have the opportunity to
17 sell the brewer's brands for one hundred twenty (120) days after
18 termination in accordance with the distributor agreement.

19 ~~D.~~ C. The brewer shall have the right to terminate an agreement
20 with a beer distributor at any time by giving the beer distributor
21 at least ninety-days' written notice by certified mail, return
22 receipt requested; provided, the brewer shall give a similar notice
23 to all other beer distributors in all other states who have entered
24 into the same distributor agreement with the brewer.

1 ~~E.~~ D. If a particular brand of beer is transferred by purchase
2 or otherwise from a brewer to a successor brewer, the following
3 shall occur:

4 1. The successor brewer shall become obligated to all of the
5 terms and conditions of the agreement in effect on the date of
6 succession. This subsection applies regardless of the character or
7 form of the succession. A successor brewer has the right to
8 contractually require its beer distributor to comply with
9 operational standards of performance, if the standards are uniformly
10 established for all of the successor brewer's distributors. A
11 successor brewer may, upon written notice, terminate its agreement,
12 in whole or in part, with a beer distributor of the brewer it
13 succeeded, for the purpose of transferring the distribution rights
14 in the beer distributor's territory to a new beer distributor,
15 provided that the successor beer distributor first pays to the
16 existing beer distributor the fair market value of the existing
17 distributor's business with respect to the terminated brand or
18 brands;

19 2. If the successor brewer decides to terminate its agreement
20 with the existing beer distributor for purposes of transfer, the
21 successor brewer shall notify the existing beer distributor in
22 writing of the successor brewer's intent not to appoint the existing
23 beer distributor for all or part of the existing beer distributor's
24 territory. The successor brewer shall mail the notice of

1 termination by certified mail, return receipt requested, to the
2 existing beer distributor. The successor brewer shall include in
3 the notice the names, addresses and telephone numbers of the
4 successor beer distributor or distributors;

5 3. a. the successor beer distributor shall negotiate with
6 the existing beer distributor to determine the fair
7 market value of the existing beer distributor's right
8 to distribute in the existing beer distributor's
9 territory. The successor beer distributor and the
10 existing beer distributor shall negotiate the fair
11 market value in good faith, and

12 b. the existing beer distributor shall continue to
13 distribute in good faith until payment of the
14 compensation agreed to under subparagraph a of this
15 paragraph, or awarded under paragraph 4 of this
16 subsection, is received; and

17 4. a. if the successor beer distributor and the existing
18 beer distributor fail to reach a written agreement on
19 the fair market value within thirty (30) days after
20 the existing beer distributor receives the notice
21 required pursuant to paragraph 2 of this subsection,
22 the successor beer distributor or the existing beer
23 distributor shall send a written notice to the other
24 party requesting arbitration pursuant to the Uniform

1 Arbitration Act, Part 2 of Article 22 of Title 13,
2 C.R.S. Arbitration shall be held for the purpose of
3 determining the fair market value of the existing beer
4 distributor's right to distribute in the existing beer
5 distributor territory,

6 b. notice of intent to arbitrate shall be sent, as
7 provided in subparagraph a of this paragraph, not
8 later than forty (40) days after the existing beer
9 distributor receives the notice required pursuant to
10 paragraph 2 of this subsection. The arbitration
11 proceeding shall conclude not later than sixty (60)
12 days after the date the notice of intent to arbitrate
13 is mailed to a party, unless this time is extended by
14 mutual agreement of the parties and the arbitrator,

15 c. any arbitration held pursuant to this subsection shall
16 be conducted in a city within this state that:

17 (1) is closest to the existing beer distributor, and

18 (2) has a population of more than twenty thousand
19 (20,000) people,

20 d. any arbitration held pursuant to this paragraph shall
21 be conducted before one impartial arbitrator to be
22 selected by the American Arbitration Association or
23 its successor. The arbitration shall be conducted in
24 accordance with the rules and procedures of the

1 Uniform Arbitration Act, Part 2 of Article 22 of Title
2 13, C.R.S.,

3 e. an arbitrator's award in any arbitration held pursuant
4 to this paragraph shall be monetary only and shall not
5 enjoin or compel conduct. Any arbitration held
6 pursuant to this paragraph shall be in lieu of all
7 other remedies and procedures,

8 f. the cost of the arbitrator and any other direct costs
9 of an arbitration held pursuant to this paragraph
10 shall be equally divided by the parties engaged in the
11 arbitration. All other costs shall be paid by the
12 party incurring them,

13 g. the arbitrator in any arbitration held pursuant to
14 this paragraph shall render a written decision not
15 later than thirty (30) days after the conclusion of
16 the arbitration, unless this time is extended by
17 mutual agreement of the parties and the arbitrator.
18 The decision of the arbitrator is final and binding on
19 the parties. The arbitrator's award may be enforced
20 by commencing a civil action in any court of competent
21 jurisdiction. Under no circumstances may the parties
22 appeal the decision of the arbitrator,

23 h. an existing beer distributor or successor beer
24 distributor who fails to participate in the

arbitration hearings in any arbitration held pursuant to this paragraph waives all rights the existing beer distributor or successor beer distributor would have had in the arbitration and is considered to have consented to the determination of the arbitrator, and

i. if the existing beer distributor does not receive payment from the successor beer distributor of the settlement or arbitration award required under paragraph 2 or 3 of this subsection within thirty (30) days after the date of the settlement or arbitration award:

(1) the existing beer distributor shall remain the beer distributor in the existing beer distributor's territory to at least the same extent that the existing beer distributor distributed the beer immediately before the successor brewer acquired rights to the brand, and

(2) the existing beer distributor is not entitled to the settlement or arbitration award.

~~F.~~ E. 1. In addition to termination rights that may be set forth in a distributor agreement, a small brewer who manufactures less than twenty-five thousand barrels of beer annually may terminate a distributor agreement with any beer distributor provided

1 that, prior to the effective date of the termination, the small
2 brewer pays the beer distributor the fair market value of the
3 distribution rights which will be lost or diminished by reason of
4 the termination.

5 2. If such small brewer and beer distributor cannot mutually
6 agree to the fair market value of the applicable distribution rights
7 lost or diminished by reason of the termination, then the brewer
8 shall pay the beer distributor a good faith estimate of the fair
9 market value of the applicable distribution rights.

10 3. If the beer distributor being terminated under paragraph 2
11 of this subsection disputes that the payment made by the small
12 brewer was less than the fair market value of the distribution
13 rights, then the beer distributor may within forty-five (45) days of
14 termination submit the question of fair market value of the
15 applicable distribution rights lost or diminished by reason of the
16 termination to binding arbitration before a panel of three neutral
17 arbitrators appointed in accordance with the commercial arbitration
18 rules of the American Arbitration Association, which panel shall
19 determine by majority decision whether the small brewer's payment
20 meets the requirements of paragraph 2 of this subsection.

21 4. If the arbitration panel rules that the payment made by the
22 small brewer to the beer distributor upon termination was less than
23 the fair market value of distribution rights lost or diminished by
24 reason of the termination, then the small brewer must pay the beer

1 distributor the difference between the payment made to the beer
2 distributor and the determined fair market value plus interest.

3 5. If the arbitration panel rules that the payment made by the
4 small brewer to the beer distributor upon termination was more than
5 the fair market value of distribution rights lost or diminished by
6 reason of the termination, then the beer distributor must pay the
7 small brewer the difference between the payment made to the beer
8 distributor and the determined fair market value, plus interest.

9 6. All arbitration fees and expenses shall be equally divided
10 among the parties to the arbitration, except if the arbitration
11 panel determines that the small brewer's payment upon termination
12 was not a good-faith estimate of the fair market value, then the
13 panel may award up to one hundred percent (100%) of the arbitration
14 costs to the small brewer.

15 ~~G.~~ F. 1. Any beer distributor or brewer who is aggrieved by a
16 violation of any provision of subsections ~~B~~ A and ~~D~~ C of this
17 section shall be entitled to recovery of damages caused by the
18 violation. Except for a dispute arising under subsection ~~E~~ D of
19 this section, damages shall be sought in a civil action in any court
20 of competent jurisdiction.

21 2. Any dispute arising under subsections ~~B~~ A and ~~D~~ C of this
22 section may also be settled by such dispute resolution procedures as
23 may be provided by a written agreement between the parties.

1 ~~H.~~ G. Nothing in this section shall be construed to limit or
2 prohibit good-faith settlements voluntarily entered into by the
3 parties.

4 ~~F.~~ H. Nothing in this section shall be construed to give a beer
5 distributor any right to compensation if an agreement with the beer
6 distributor is terminated by a brewer pursuant to subsections ~~B~~ A, ~~C~~
7 B and ~~D~~ C of this section.

8 ~~J.~~ I. No brewer shall require any beer distributor to waive
9 compliance with any provision of the Oklahoma Alcoholic Beverage
10 Control Act.

11 ~~K.~~ J. No brewer shall charge or accept, and no beer distributor
12 shall pay or provide, any money, property, gratuity, rebate, free
13 goods, shipping charges different than those charged for all beer
14 distributors, allowances, thing of value or inducement from a beer
15 distributor in exchange for the brewer entering into a distributor
16 agreement with the beer distributor. However, a brewer who also
17 holds a beer distributor license and desires to sell all or a
18 portion of its beer distribution rights and business, or a holder of
19 small brewer license who desires to change its election from self-
20 distribution to the use of a distributor agreement may accept a
21 payment for the fair market value of its existing and established
22 distribution business in the subject territory.

23 ~~L.~~ K. This section shall apply to any agreement entered into
24 and any renewals, extensions, amendments or conduct constituting a

1 modification of a distributor agreement by a brewer or cider
2 manufacturer existing on or after ~~the effective date of this act~~
3 October 1, 2018.

4 ~~M.~~ L. Where a cider manufacturer distributes cider through a
5 beer distributor, the rights and obligations of the cider
6 manufacturer, the distributor, a successor cider manufacturer and a
7 successor distributor shall be the same as the rights and
8 obligations provided in this section for a brewer, beer distributor,
9 successor brewer and successor beer distributor.

10 SECTION 2. This act shall become effective November 1, 2020.

11 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
12 February 27, 2020 - DO PASS AS AMENDED
13
14
15
16
17
18
19
20
21
22
23
24