

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1681

By: Leewright

AS INTRODUCED

An Act relating to alcoholic beverages; amending Section 81, Chapter 366, O.S.L. 2018, as amended by Section 16, Chapter 364, O.S.L. 2017 (37A O.S. Supp. 2019, Section 3-111), which relates to termination of distribution agreements; setting certain annual barrel criteria for distribution agreements; updating statutory reference; and providing an 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, who manufactures less than twenty-five thousand (25,000) barrels of beer annually, is not subject to the termination provisions of this section.

B. 1. Except as provided in subsections 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,

- 1           b.    the beer distributor receives written notification by  
2               certified mail, return receipt requested, from the  
3               brewer of the alleged noncompliance and is afforded no  
4               less than sixty (60) days in which to cure such  
5               noncompliance. If not capable of being cured within  
6               the sixty-day period, the beer distributor shall begin  
7               the cure within the sixty-day period and diligently  
8               pursue the cure as promptly as feasible,
- 9           c.    the beer distributor fails to cure such noncompliance  
10               within the allotted cure period, and
- 11           d.    the brewer provides written notice by certified mail,  
12               return receipt requested, to the beer distributor of  
13               such continued noncompliance. The notification shall  
14               contain a statement of the intention of the brewer to  
15               terminate the distributor agreement, the reasons for  
16               the termination and the date the termination shall  
17               take effect.

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

22           C.    A brewer may immediately terminate a distributor agreement,  
23           effective upon furnishing written notification to the beer  
24

1 distributor by certified mail, return receipt requested, for any of  
2 the following reasons:

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

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

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

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

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

23 6. Any attempted transfer of ownership of the beer distributor,  
24 stock of the beer distributor or stock of any parent corporation of

1 the beer distributor, or any change in the beneficial ownership or  
2 control of any entity having control of the beer distributor,  
3 without obtaining the prior written approval of the brewer, which  
4 may not be unreasonably withheld, except as may otherwise be  
5 permitted pursuant to a written agreement between the parties;

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

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

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

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

21 D. The brewer shall have the right to terminate an agreement  
22 with a beer distributor at any time by giving the beer distributor  
23 at least ninety-days' written notice by certified mail, return  
24 receipt requested; provided, the brewer shall give a similar notice

1 to all other beer distributors in all other states who have entered  
2 into the same distributor agreement with the brewer.

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

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

21 2. If the successor brewer decides to terminate its agreement  
22 with the existing beer distributor for purposes of transfer, the  
23 successor brewer shall notify the existing beer distributor in  
24 writing of the successor brewer's intent not to appoint the existing  
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1 beer distributor for all or part of the existing beer distributor's  
2 territory. The successor brewer shall mail the notice of  
3 termination by certified mail, return receipt requested, to the  
4 existing beer distributor. The successor brewer shall include in  
5 the notice the names, addresses and telephone numbers of the  
6 successor beer distributor or distributors;

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

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

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

1 distributor shall send a written notice to the other  
2 party requesting arbitration pursuant to the Uniform  
3 Arbitration Act, Part 2 of Article 22 of Title 13,  
4 C.R.S. Arbitration shall be held for the purpose of  
5 determining the fair market value of the existing beer  
6 distributor's right to distribute in the existing beer  
7 distributor territory,

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

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

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

20 (2) has a population of more than twenty thousand

21 (20,000) people,

22 d. any arbitration held pursuant to this paragraph shall  
23 be conducted before one impartial arbitrator to be  
24 selected by the American Arbitration Association or  
25

1 its successor. The arbitration shall be conducted in  
2 accordance with the rules and procedures of the  
3 Uniform Arbitration Act, Part 2 of Article 22 of Title  
4 13, C.R.S.,

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

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

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



1 h. an existing beer distributor or successor beer  
2 distributor who fails to participate in the  
3 arbitration hearings in any arbitration held pursuant  
4 to this paragraph waives all rights the existing beer  
5 distributor or successor beer distributor would have  
6 had in the arbitration and is considered to have  
7 consented to the determination of the arbitrator, and

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

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

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

23 F. 1. In addition to termination rights that may be provided  
24 by law or set forth in a distributor agreement, a small brewer who

1 manufactures less than twenty-five thousand barrels of beer annually  
2 may terminate a distributor agreement with any beer distributor  
3 provided that, prior to the effective date of the termination, the  
4 small brewer pays the beer distributor the fair market value of the  
5 distribution rights which will be lost or diminished by reason of  
6 the termination.

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

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

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

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

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

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

1        2. Any dispute arising under subsections B and D of this  
2 section may also be settled by such dispute resolution procedures as  
3 may be provided by a written agreement between the parties.

4        H. Nothing in this section shall be construed to limit or  
5 prohibit good-faith settlements voluntarily entered into by the  
6 parties.

7        I. Nothing in this section shall be construed to give a beer  
8 distributor any right to compensation if an agreement with the beer  
9 distributor is terminated by a brewer pursuant to subsections B, C  
10 and D of this section.

11       J. No brewer shall require any beer distributor to waive  
12 compliance with any provision of the Oklahoma Alcoholic Beverage  
13 Control Act.

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

3 L. This section shall apply to any agreement entered into and  
4 any renewals, extensions, amendments or conduct constituting a  
5 modification of a distributor agreement by a brewer or cider  
6 manufacturer existing on or after ~~the effective date of this act~~  
7 October 1, 2018.

8 M. Where a cider manufacturer distributes cider through a beer  
9 distributor, the rights and obligations of the cider manufacturer,  
10 the distributor, a successor cider manufacturer and a successor  
11 distributor shall be the same as the rights and obligations provided  
12 in this section for a brewer, beer distributor, successor brewer and  
13 successor beer distributor.

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

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