

An Act

ENROLLED HOUSE
BILL NO. 2803

By: Marti and Turner of the
House

and

Coleman of the Senate

An Act relating to alcoholic beverages; amending 37A O.S. 2021, Section 3-111, as amended by Section 7, Chapter 338, O.S.L. 2023 (37A O.S. Supp. 2024, Section 3-111), which relates to termination of distribution agreements; requiring certain things to occur before a brewer terminates a distributor; modifying timing requirements; updating actions that may allow a brewer to immediately terminate a distributor agreement; requiring a new distributor to purchase any remaining inventory for laid in cost of an old distributor in certain instances; requiring arbitrators to have certain qualifications; providing for when an appeal of a decision of an arbitrator may be made; requiring small brewers to purchase any remaining inventory for laid in cost when terminating a distribution agreement in certain circumstances; providing that a penalty for wrongful termination and a distribution agreement may include the purchase of any remaining inventory for laid in cost; updating statutory language; updating statutory reference; and providing an effective date.

SUBJECT: Alcoholic beverages

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

SECTION 1. AMENDATORY 37A O.S. 2021, Section 3-111, as amended by Section 7, Chapter 338, O.S.L. 2023 (37A O.S. Supp. 2024, Section 3-111), is amended to read as follows:

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

B. 1. Except as provided in subsection C of this section, no brewer shall terminate a distributor agreement with any beer distributor without establishing good cause for such termination and unless all of the following occur:

- a. the beer distributor receives written notification by certified mail, return receipt requested, from the brewer ~~of~~ stating with specificity the alleged noncompliance with the provisions of the agreement and is afforded no less than sixty (60) days in which to cure such noncompliance. If not capable of being cured within the sixty-day period, the beer distributor shall begin the cure within the sixty-day period and diligently pursue the cure as promptly as feasible,
- b. the beer distributor fails to cure such noncompliance within the allotted cure period, and
- c. the brewer provides written notice by certified mail, return receipt requested, to the beer distributor of such continued noncompliance. The notification shall contain a statement of the intention of the brewer to terminate the distributor agreement, the reasons for the termination, and the date the termination shall take effect.

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

C. A brewer may immediately terminate a distributor agreement, effective upon furnishing written notification to the beer distributor by certified mail, return receipt requested, for any of the following reasons:

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

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

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

4. The beer distributor has been convicted of a felony that, in the brewer's sole judgment, adversely affects the goodwill of the beer distributor or brewer; provided, however, an existing stockholder or stockholders, partner or partners, or member or members shall have the right to purchase the stock, partnership interest, or membership interest of the offending stockholder, partner, or member prior to the conviction of the offending stockholder, partner, or member, subject to brewer's approval, which shall not be unreasonably withheld, and if the sale is completed prior to conviction, the provisions of this paragraph shall not apply;

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

6. Any attempted transfer or change in beneficial ownership of ten percent (10%) or more of the beer distributor, stock of the beer distributor, or stock of any parent corporation of the beer distributor, or any change in the ownership or control of any entity having control of the beer distributor, without obtaining the prior written approval of the brewer, which may not be unreasonably withheld and shall be based on objective requirements imposed on all other distributors, except as may otherwise be permitted pursuant to a written agreement between the parties;

7. Fraudulent conduct, by or on the part of the beer distributor or any owner of the beer distributor, or by any employee as to which the beer distributor or any of its owners or its senior management knew or reasonably should have known, in the beer distributor's dealings with the brewer of beer, including the

intentional sale of beer outside the brewer's established quality standards; provided, however, in the case of fraudulent conduct by a beer distributor employee other than the owner or senior management and only in the event the beer distributor was unaware or should not have been aware of such fraudulent conduct, the beer distributor shall be allowed a sixty-day cure period following written notice of such conduct from the brewer, and shall only be terminated for failing to cure the same within sixty (60) days thereof;

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

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

D. Any beer distributor terminated by a brewer under subsection B of this section shall have the opportunity to sell the brewer's brand rights for one hundred twenty (120) days after termination in accordance with the distributor agreement. If no such sale occurs, the brewer's newly appointed distributor shall pay the beer distributor the fair market value of the distribution rights, which will be lost or diminished by reason of termination, and the newly appointed distributor shall purchase any remaining unexpired inventory for laid in cost. If the parties cannot agree on the fair market value, the parties shall follow the same procedures as set forth in paragraphs 2 through 6 of subsection G of this section.

E. The brewer shall have the right to terminate an agreement with a beer distributor at any time by giving the beer distributor at least ~~ninety days'~~ ninety (90) days' written notice by certified mail, return receipt requested; provided, the brewer shall give a similar notice to all beer distributors in all other states with which the brewer has a distributor agreement.

F. 1. If a particular brand of beer is transferred by purchase or otherwise from a brewer to a successor brewer, the successor brewer shall become obligated to all of the terms and conditions of the agreement in effect on the date of succession. This subsection applies regardless of the character or form of the succession. A

successor brewer has the right to contractually require its beer distributor to comply with operational standards of performance, if the standards are uniformly established for all of the successor brewer's distributors. Provided, however, where the successor brewer holds a brewer's license in the state as of January 1, 2023, and has an existing distribution agreement with a beer distributor, the successor brewer may terminate the distribution agreement, in whole or in part, in order to transfer the brand rights to the successor brewer's beer distributor with at least sixty (60) days' written notice to the terminated distributor and with termination effective upon payment to the terminated beer distributor the fair market value of the terminated beer distributor's business with respect to the terminated brand or brands.

2. A successor brewer may, upon written notice, terminate its agreement, in whole or in part, with a beer distributor of the brewer it succeeded, for the purpose of transferring the distribution rights in the beer distributor's territory to a new beer distributor, provided that the successor beer distributor first pays to the existing beer distributor the fair market value of the existing distributor's business with respect to the terminated brand or brands~~+~~.

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

4. a. the successor beer distributor shall negotiate with the existing beer distributor to determine the fair market value of the existing beer distributor's right to distribute in the existing beer distributor's territory. The successor beer distributor and the existing beer distributor shall negotiate the fair market value in good faith, and
- b. the existing beer distributor shall continue to distribute in good faith until payment of the compensation agreed to under subparagraph a of this

paragraph, or awarded under paragraph 4 5 of this subsection, is received; ~~and.~~

5. a. if the successor beer distributor and the existing beer distributor fail to reach a written agreement on the fair market value within thirty (30) days after the existing beer distributor receives the notice required pursuant to paragraph 2 of this subsection, the successor beer distributor or the existing beer distributor shall send a written notice to the other party requesting arbitration pursuant to the Uniform Arbitration Act, Part 2 of Article 22 of Title 13, C.R.S. Arbitration shall be held for the purpose of determining the fair market value of the existing beer distributor's right to distribute in the existing beer distributor territory,
- b. notice of intent to arbitrate shall be sent, as provided in subparagraph a of this paragraph, not later than forty (40) days after the existing beer distributor receives the notice required pursuant to paragraph 2 of this subsection. The arbitration proceeding shall conclude not later than sixty (60) days after the date the notice of intent to arbitrate is mailed to a party, unless this time is extended by mutual agreement of the parties and the arbitrator,
- c. any arbitration held pursuant to this subsection shall be conducted in a city within this state that:
 - (1) is closest to the existing beer distributor, and
 - (2) has a population of more than twenty thousand (20,000) people according to the latest Federal Decennial Census,
- d. any arbitration held pursuant to this paragraph shall be conducted before one impartial arbitrator to be selected by the American Arbitration Association (AAA) or its successor. The arbitration shall be conducted in accordance with the rules and procedures of the Uniform Arbitration Act, Part 2 of Article 22 of Title 13, C.R.S. The AAA arbitrator shall have no fewer than fifteen (15) years of experience in franchise law and shall use the laws of the state where the

distributor is located and shall not use other state laws in his or her reviews,

- e. an arbitrator's award in any arbitration held pursuant to this paragraph shall be monetary only and shall not enjoin or compel conduct. Any arbitration held pursuant to this paragraph shall be in lieu of all other remedies and procedures,
- f. the cost of the arbitrator and any other direct costs of an arbitration held pursuant to this paragraph shall be equally divided by the parties engaged in the arbitration. All other costs shall be paid by the party incurring them,
- g. the arbitrator in any arbitration held pursuant to this paragraph shall render a written decision not later than thirty (30) days after the conclusion of the arbitration, unless this time is extended by mutual agreement of the parties and the arbitrator. The decision of the arbitrator is final and binding on the parties, but questions of error of law may be appealed by either party to a state or federal court in the state where the distributor is located. The arbitrator's award may be enforced by commencing a civil action in any court of competent jurisdiction. Under no circumstances may the parties appeal the decision of the arbitrator,
- h. an existing beer distributor or successor beer 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~~ subparagraph e through g of this ~~subsection~~ paragraph 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.

G. 1. In addition to termination rights that may be set forth in a distributor agreement, a small brewer may terminate a distributor agreement with any beer distributor; provided, that prior to the effective date of the termination, the small brewer pays the beer distributor the fair market value of the distribution rights which will be lost or diminished by reason of the termination and purchases, or requires the newly appointed distributor to purchase, any remaining unexpired inventory for laid in cost.

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

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

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

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

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

H. 1. Any beer distributor or brewer who is aggrieved by a violation of any provision of this section shall be entitled to the recovery of damages caused by the violation. If a beer distributor is not terminated in accordance with the provisions of this section, damages may additionally include the fair market value of the distribution rights and the purchase, or the requirement that the newly appointed distributor purchase, any remaining unexpired inventory for laid in cost. Damages shall be sought in a civil action in any court of competent jurisdiction.

2. Any dispute arising under this section may also be settled by such dispute resolution procedures as may be provided by a written agreement between the parties.

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

J. Except as otherwise provided herein, nothing in this section shall be construed to give a beer distributor any right to compensation if an agreement with the beer distributor is terminated by a brewer pursuant to this section.

K. No brewer shall require any beer distributor to waive compliance with any provision of the Oklahoma Alcoholic Beverage Control Act and any provisions of the Oklahoma Alcoholic Beverage Control Act shall supersede any provisions of a distributor agreement in conflict in this section.

L. No brewer shall charge or accept, and no beer distributor shall pay or provide, in a material way, any money, property,

gratuity, rebate, free goods, shipping charges different than those charged for all beer distributors, allowances, thing of value, or other inducement, as defined in Section 3-123 of this title, from a beer distributor in exchange for the brewer entering into a distributor agreement with the beer distributor. However, a brewer who also holds a beer distributor license and desires to sell all or a portion of its beer distribution rights and business, or a holder of a small brewer license who desires to change its election from self-distribution to the use of a distributor agreement, may accept a payment for the fair market value of its existing and established distribution business in the subject territory.

M. This section shall apply to any agreement entered into and any renewals, extensions, amendments, or conduct constituting a modification of a distributor agreement by a brewer or cider manufacturer.

N. Where a cider manufacturer distributes cider through a beer distributor, the rights and obligations of the cider manufacturer, the distributor, a successor cider manufacturer, and a successor distributor shall be the same as the rights and obligations provided in this section for a brewer, beer distributor, successor brewer, and successor beer distributor.

SECTION 2. This act shall become effective November 1, 2025.

Passed the House of Representatives the 15th day of May, 2025.

Presiding Officer of the House
of Representatives

Passed the Senate the 7th day of May, 2025.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.

By: _____