

1 **SENATE FLOOR VERSION**

2 April 10, 2023

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 1715

6 By: Marti of the House

7 and

8 Coleman of the Senate

9 [alcoholic beverages - termination of beer
10 distribution agreement - small brewer - arbitration
11 costs - effective date]

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

13 SECTION 1. AMENDATORY 37A O.S. 2021, Section 3-111, is
14 amended to read as follows:

15 Section 3-111. A. Except as provided in subsection ~~F~~ E of this
16 section, a small brewer who manufactures less than twenty-five
17 thousand barrels of beer annually is not subject to the termination
18 provisions of this section.

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

- 23 a. ~~the brewer establishes good cause for such~~
24 ~~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.~~

10 b. the beer distributor fails to cure such noncompliance
11 within the allotted cure period, and

12 ~~d.~~

13 c. the brewer provides written notice by certified mail,
14 return receipt requested, to the beer distributor of
15 such continued noncompliance. The notification shall
16 contain a statement of the intention of the brewer to
17 terminate the distributor agreement, the reasons for
18 the termination and the date the termination shall
19 take effect.

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

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

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

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

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

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

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

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

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

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

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

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

23 D. ~~The brewer shall have the right to terminate an agreement~~
24 ~~with a beer distributor at any time by giving the beer distributor~~

1 ~~at least ninety days' written notice by certified mail, return~~
2 ~~receipt requested; provided, the brewer shall give a similar notice~~
3 ~~to all other beer distributors in all other states who have entered~~
4 ~~into the same distributor agreement with the brewer.~~

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

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

23 2. ~~If the successor brewer decides to terminate its agreement~~
24 ~~with the existing beer distributor for purposes of transfer, the~~

1 ~~successor brewer shall notify the existing beer distributor in~~
2 ~~writing of the successor brewer's intent not to appoint the existing~~
3 ~~beer distributor for all or part of the existing beer distributor's~~
4 ~~territory. The successor brewer shall mail the notice of~~
5 ~~termination by certified mail, return receipt requested, to the~~
6 ~~existing beer distributor. The successor brewer shall include in~~
7 ~~the notice the names, addresses and telephone numbers of the~~
8 ~~successor beer distributor or distributors;~~

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

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

21 ~~4. a. if the successor beer distributor and the existing~~
22 ~~beer distributor fail to reach a written agreement on~~
23 ~~the fair market value within thirty (30) days after~~
24 ~~the existing beer distributor receives the notice~~

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

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

19 ~~c. any arbitration held pursuant to this subsection shall~~
20 ~~be conducted in a city within this state that:~~
21 ~~(1) is closest to the existing beer distributor, and~~
22 ~~(2) has a population of more than twenty thousand~~
23 ~~(20,000) people,~~

- 1 ~~d. any arbitration held pursuant to this paragraph shall~~
2 ~~be conducted before one impartial arbitrator to be~~
3 ~~selected by the American Arbitration Association or~~
4 ~~its successor. The arbitration shall be conducted in~~
5 ~~accordance with the rules and procedures of the~~
6 ~~Uniform Arbitration Act, Part 2 of Article 22 of Title~~
7 ~~13, C.R.S.,~~
- 8 ~~e. an arbitrator's award in any arbitration held pursuant~~
9 ~~to this paragraph shall be monetary only and shall not~~
10 ~~enjoin or compel conduct. Any arbitration held~~
11 ~~pursuant to this paragraph shall be in lieu of all~~
12 ~~other remedies and procedures,~~
- 13 ~~f. the cost of the arbitrator and any other direct costs~~
14 ~~of an arbitration held pursuant to this paragraph~~
15 ~~shall be equally divided by the parties engaged in the~~
16 ~~arbitration. All other costs shall be paid by the~~
17 ~~party incurring them,~~
- 18 ~~g. the arbitrator in any arbitration held pursuant to~~
19 ~~this paragraph shall render a written decision not~~
20 ~~later than thirty (30) days after the conclusion of~~
21 ~~the arbitration, unless this time is extended by~~
22 ~~mutual agreement of the parties and the arbitrator.~~
23 ~~The decision of the arbitrator is final and binding on~~
24 ~~the parties. The arbitrator's award may be enforced~~

1 ~~by commencing a civil action in any court of competent~~
2 ~~jurisdiction. Under no circumstances may the parties~~
3 ~~appeal the decision of the arbitrator,~~

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

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

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

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

3 F. E. 1. In addition to termination rights that may be set
4 forth in a distributor agreement, a small brewer who manufactures
5 less than twenty-five thousand barrels of beer annually may
6 terminate a distributor agreement with any beer distributor provided
7 that, prior to the effective date of the termination, the small
8 brewer pays the beer distributor the fair market value of the
9 distribution rights which will be lost or diminished by reason of
10 the termination.

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

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

1 determine by majority decision whether the small brewer's payment
2 meets the requirements of paragraph 2 of this subsection.

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

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

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

21 ~~G. F.~~ F. 1. Any beer distributor or brewer who is aggrieved by a
22 violation of any provision of subsections B and ~~D~~ C of this section
23 shall be entitled to recovery of damages caused by the violation.
24 ~~Except for a dispute arising under subsection E of this section,~~

1 ~~damages~~ Damages shall be sought in a civil action in any court of
2 competent jurisdiction.

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

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

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

13 ~~J.~~ I. No brewer shall require any beer distributor to waive
14 compliance with any provision of the Oklahoma Alcoholic Beverage
15 Control Act.

16 ~~K.~~ J. No brewer shall charge or accept, and no beer distributor
17 shall pay or provide, in any material way, any money, property,
18 gratuity, rebate, free goods, shipping charges different than those
19 charged for all beer distributors, allowances, thing of value or
20 other inducement, as defined in Section 3-123 of this title, from a
21 beer distributor in exchange for the brewer entering into a
22 distributor agreement with the beer distributor. However, a brewer
23 who also holds a beer distributor license and desires to sell all or
24 a portion of its beer distribution rights and business, or a holder

1 of small brewer license who desires to change its election from
2 self-distribution to the use of a distributor agreement may accept a
3 payment for the fair market value of its existing and established
4 distribution business in the subject territory.

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

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

16 SECTION 2. This act shall become effective November 1, 2023.

17 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
18 April 10, 2023 - DO PASS AS AMENDED
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