

1 **SENATE FLOOR VERSION**

2 February 27, 2023

3 **AS AMENDED**

4 SENATE BILL NO. 422

By: Coleman of the Senate

and

Marti of the House

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6
7
8 [alcoholic beverages - agreement - provisions -
9 remedy of noncompliance - interest - conditions -
10 renegotiation - damages - compensation - effective
11 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 of this
16 section, a small brewer, who manufactures less than twenty-five
17 thousand (25,000) barrels of beer annually, is not subject to the
18 termination provisions of this section.

19 B. 1. Except as provided in ~~subsections C, D and E~~ subsection
20 C of this section, no brewer shall terminate a distributor agreement
21 with any 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)~~ ninety (90) days in which to cure
5 such noncompliance. If not capable of being cured
6 within the ~~sixty-day~~ ninety-day period, the beer
7 distributor shall begin the cure within the ~~sixty-day~~
8 ninety-day period and diligently pursue the cure as
9 promptly as feasible,

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

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

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

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

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 undisputed account
4 when due 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)~~ thirty-one (31) days, a beer
13 distributor's state, local or federal license or permit to sell beer
14 in this 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; provided, however, an existing
18 stockholder or stockholders, partner or partners, or member or
19 members shall have the right to purchase the stock, partnership
20 interest, or membership interest of the offending stockholder,
21 partner, or member prior to the conviction of the offending
22 stockholder, partner, or member, and if the sale is completed prior
23 to conviction, the provisions of this paragraph shall not apply;
24

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

6 6. Any attempted transfer of at least fifty percent (50%)
7 ownership of the beer distributor, stock of the beer distributor or
8 stock of any parent corporation of the beer distributor, or any
9 change in more than fifty percent (50%) of the beneficial ownership
10 or control of any entity having control of the beer distributor,
11 without obtaining the prior written approval of the brewer, which
12 may not be unreasonably withheld, except as may otherwise be
13 permitted pursuant to a written agreement between the parties;

14 7. Fraudulent conduct made with the express, prior knowledge of
15 the ownership and management of the beer distributor in the beer
16 distributor's dealings with the brewer of beer, including the
17 intentional sale of beer outside the brewer's established quality
18 standards;

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

1 9. Any material and repeated sale of beer, directly or
2 indirectly, to customers located outside the territory assigned to
3 the beer distributor by the brewer made with the express, prior
4 knowledge of the ownership and management of the beer distributor
5 unless expressly authorized by the brewer.

6 ~~Provided, the D.~~ Any beer distributor terminated by a brewer
7 under subsection B or C of this section shall have the opportunity
8 to sell the brewer's brands for one hundred twenty (120) days after
9 termination in accordance with the distributor agreement.
10 Additionally, the brewer shall pay the beer distributor the fair
11 market value of the distribution rights, which may be lost or
12 diminished by reason of the termination. If the beer distributor
13 disputes that the payment made by the brewer was the fair market
14 value of the distribution rights, the beer distributor may submit
15 the question of fair market value to binding arbitration in
16 accordance with the procedures set forth in paragraphs 3 through 6
17 of subsection F of this subsection.

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

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

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

1 ~~arbitration hearings in any arbitration held pursuant~~
2 ~~to this paragraph waives all rights the existing beer~~
3 ~~distributor or successor beer distributor would have~~
4 ~~had in the arbitration and is considered to have~~
5 ~~consented to the determination of the arbitrator, and~~
6 ~~i. if the existing beer distributor does not receive~~
7 ~~payment from the successor beer distributor of the~~
8 ~~settlement or arbitration award required under~~
9 ~~paragraph 2 or 3 of this subsection within thirty (30)~~
10 ~~days after the date of the settlement or arbitration~~
11 ~~award.~~

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

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

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

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

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

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

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

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~~ shall order that one hundred percent (100%) of
14 the arbitration costs ~~to be paid by~~ the small brewer.

15 G. 1. Any beer distributor or brewer who is aggrieved by a
16 violation of any provision of subsections B and ~~D~~ C of this section
17 shall be entitled to recovery ~~of~~ damages caused by the violation,
18 including an improper termination by a brewer, which damages shall
19 include the fair market value of the distribution rights if the beer
20 distributor is improperly terminated by the brewer. ~~Except for a~~
21 dispute arising under subsection E of this section, damages Damages
22 shall be sought in a civil action in any court of competent
23 jurisdiction.

24

1 2. Any dispute arising under subsections B and ~~D~~ C 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 and any provisions of a distributor agreement in
14 conflict with the provisions of the Oklahoma Alcoholic Beverage
15 Control Act shall be null and void.

16 ~~K.~~ J. No brewer shall charge or accept, and no beer distributor
17 shall pay or provide, in a 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 February 27, 2023 - DO PASS AS AMENDED
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