

1 STATE OF OKLAHOMA

2 1st Session of the 60th Legislature (2025)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 2803

By: Marti of the House

and

6 Coleman of the Senate

7
8
9 COMMITTEE SUBSTITUTE

10 An Act relating to alcoholic beverages; amending 37A
11 O.S. 2021, Section 3-111, as amended by Section 7,
12 Chapter 338, O.S.L. 2023 (37A O.S. Supp. 2024,
13 Section 3-111), which relates to termination of
14 distribution agreements; requiring certain things to
15 occur before a brewer terminates a distributor;
16 modifying timing requirements; updating actions that
17 may allow a brewer to immediately terminate a
18 distributor agreement; requiring a new distributor to
19 purchase any remaining inventory for laid in cost of
20 an old distributor in certain instances; requiring
21 arbitrators to have certain qualifications; providing
22 for when an appeal of a decision of an arbitrator may
23 be made; requiring small brewers to purchase any
24 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.

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

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

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

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

12 a. the beer distributor receives written notification by
13 certified mail, return receipt requested, from the
14 brewer ~~of~~ stating with specificity the alleged
15 noncompliance with the provisions of the agreement and
16 is afforded no less than sixty (60) days in which to
17 cure such noncompliance. If not capable of being
18 cured within the sixty-day period, the beer
19 distributor shall begin the cure within the sixty-day
20 period and diligently pursue the cure as promptly as
21 feasible,

22 b. the beer distributor fails to cure such noncompliance
23 within the allotted cure period, and
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1 c. the brewer provides written notice by certified mail,
2 return receipt requested, to the beer distributor of
3 such continued noncompliance. The notification shall
4 contain a statement of the intention of the brewer to
5 terminate the distributor agreement, the reasons for
6 the termination, and the date the termination shall
7 take effect.

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

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

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

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

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

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

16 5. A beer distributor has been convicted of, found guilty of,
17 or 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 or change in beneficial ownership of
22 ten percent (10%) or more of the beer distributor, stock of the beer
23 distributor, or stock of any parent corporation of the beer
24 distributor, or any change in the ownership or control of any entity

1 having control of the beer distributor, without obtaining the prior
2 written approval of the brewer, which may not be unreasonably
3 withheld and shall be based on objective requirements imposed on all
4 other distributors, except as may otherwise be permitted pursuant to
5 a written agreement between the parties;

6 7. Fraudulent conduct, by or on the part of the beer
7 distributor or any owner of the beer distributor, or by any employee
8 as to which the beer distributor or any of its owners or its senior
9 management knew or reasonably should have known, in the beer
10 distributor's dealings with the brewer of beer, including the
11 intentional sale of beer outside the brewer's established quality
12 standards; provided, however, in the case of fraudulent conduct by
13 a beer distributor employee other than the owner or senior
14 management and only in the event the beer distributor was unaware or
15 should not have been aware of such fraudulent conduct, the beer
16 distributor shall be allowed a sixty-day cure period following
17 written notice of such conduct from the brewer, and shall only be
18 terminated for failing to cure the same within sixty (60) days
19 thereof;

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

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

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

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

23 F. 1. If a particular brand of beer is transferred by purchase
24 or otherwise from a brewer to a successor brewer, the successor

1 brewer shall become obligated to all of the terms and conditions of
2 the agreement in effect on the date of succession. This subsection
3 applies regardless of the character or form of the succession. A
4 successor brewer has the right to contractually require its beer
5 distributor to comply with operational standards of performance, if
6 the standards are uniformly established for all of the successor
7 brewer's distributors. Provided, however, where the successor
8 brewer holds a brewer's license in the state as of January 1, 2023,
9 and has an existing distribution agreement with a beer distributor,
10 the successor brewer may terminate the distribution agreement, in
11 whole or in part, in order to transfer the brand rights to the
12 successor brewer's beer distributor with at least sixty (60) days'
13 written notice to the terminated distributor and with termination
14 effective upon payment to the terminated beer distributor the fair
15 market value of the terminated beer distributor's business with
16 respect to the terminated brand or brands.

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

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

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

18 b. the existing beer distributor shall continue to
19 distribute in good faith until payment of the
20 compensation agreed to under subparagraph a of this
21 paragraph, or awarded under paragraph 4 5 of this
22 subsection, is received.

23 5. a. if the successor beer distributor and the existing
24 beer distributor fail to reach a written agreement on

1 the fair market value within thirty (30) days after
2 the existing beer distributor receives the notice
3 required pursuant to paragraph 2 of this subsection,
4 the successor beer distributor or the existing beer
5 distributor shall send a written notice to the other
6 party requesting arbitration pursuant to the Uniform
7 Arbitration Act, Part 2 of Article 22 of Title 13,
8 C.R.S. Arbitration shall be held for the purpose of
9 determining the fair market value of the existing beer
10 distributor's right to distribute in the existing beer
11 distributor territory,

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

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

23 (1) is closest to the existing beer distributor, and
24

1 (2) has a population of more than twenty thousand
2 (20,000) people according to the latest Federal
3 Decennial Census,

4 d. any arbitration held pursuant to this paragraph shall
5 be conducted before one impartial arbitrator to be
6 selected by the American Arbitration Association (AAA)
7 or its successor. The arbitration shall be conducted
8 in accordance with the rules and procedures of the
9 Uniform Arbitration Act, Part 2 of Article 22 of Title
10 13, C.R.S. The AAA arbitrator shall have no fewer
11 than fifteen (15) years of experience in franchise law
12 and shall use the laws of the state where the
13 distributor is located and shall not use other state
14 laws in his or her reviews,

15 e. an arbitrator's award in any arbitration held pursuant
16 to this paragraph shall be monetary only and shall not
17 enjoin or compel conduct. Any arbitration held
18 pursuant to this paragraph shall be in lieu of all
19 other remedies and procedures,

20 f. the cost of the arbitrator and any other direct costs
21 of an arbitration held pursuant to this paragraph
22 shall be equally divided by the parties engaged in the
23 arbitration. All other costs shall be paid by the
24 party incurring them,

1 g. the arbitrator in any arbitration held pursuant to
2 this paragraph shall render a written decision not
3 later than thirty (30) days after the conclusion of
4 the arbitration, unless this time is extended by
5 mutual agreement of the parties and the arbitrator.
6 The decision of the arbitrator is final and binding on
7 the parties, but questions of error of law may be
8 appealed by either party to a state or federal court
9 in the state where the distributor is located. The
10 arbitrator's award may be enforced by commencing a
11 civil action in any court of competent jurisdiction.
12 Under no circumstances may the parties appeal the
13 decision of the arbitrator,

14 h. an existing beer distributor or successor beer
15 distributor who fails to participate in the
16 arbitration hearings in any arbitration held pursuant
17 to this paragraph waives all rights the existing beer
18 distributor or successor beer distributor would have
19 had in the arbitration and is considered to have
20 consented to the determination of the arbitrator, and

21 i. if the existing beer distributor does not receive
22 payment from the successor beer distributor of the
23 settlement or arbitration award required under
24 ~~paragraph 2 or 3~~ subparagraph e through g of this

1 ~~subsection~~ paragraph within thirty (30) days after the
2 date of the settlement or arbitration award:

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

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

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

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

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

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

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

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

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

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

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

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

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

8 L. No brewer shall charge or accept, and no beer distributor
9 shall pay or provide, in a material way, any money, property,
10 gratuity, rebate, free goods, shipping charges different than those
11 charged for all beer distributors, allowances, thing of value, or
12 other inducement, as defined in Section 3-123 of this title, from a
13 beer distributor in exchange for the brewer entering into a
14 distributor agreement with the beer distributor. However, a brewer
15 who also holds a beer distributor license and desires to sell all or
16 a portion of its beer distribution rights and business, or a holder
17 of a small brewer license who desires to change its election from
18 self-distribution to the use of a distributor agreement, may accept
19 a payment for the fair market value of its existing and established
20 distribution business in the subject territory.

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

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

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

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