

Chapter 14 Utah Beer Industry Distribution Act

Part 1 General Provisions

32B-14-101 Title -- Legislative intent.

- (1) This chapter is known as the "Utah Beer Industry Distribution Act."
- (2)
 - (a) It is the policy of the Legislature to regulate and control the importation, sale, and distribution of beer within the state in the exercise of its powers under the Twenty-first Amendment to the Constitution of the United States and pursuant to the Utah Constitution.
 - (b) In furtherance of the policy described in Subsection (2)(a), this chapter is enacted to:
 - (i) promote good faith and fair dealing in the business relationships between suppliers, wholesalers, and retailers of beer; and
 - (ii) provide for the establishment and maintenance of an orderly system for the distribution of beer in accordance with the laws of the state regulating the sale and distribution of beer to the public.

Enacted by Chapter 276, 2010 General Session

32B-14-102 Definitions.

As used in this chapter:

- (1) "Affected party" means a supplier or wholesaler who is a party to a distributorship agreement that a terminating party seeks to terminate or not renew.
- (2)
 - (a) "Distributorship agreement" means a written agreement between a supplier and a wholesaler pursuant to which the wholesaler has the right to purchase, resell, and distribute in a designated geographical area any brand of beer manufactured, imported, or distributed by the supplier.
 - (b) For purposes of this chapter, a separate agreement between a supplier and a wholesaler is considered to be part of a distributorship agreement if it relates to:
 - (i) the relationship between the supplier and the wholesaler; or
 - (ii) the duties of either the supplier or the wholesaler under a distributorship agreement.
- (3) "Good cause" means the material failure by a supplier or a wholesaler to comply with an essential, reasonable, and lawful requirement imposed by a distributorship agreement if the failure occurs after the supplier or wholesaler acting in good faith provides notice of deficiency and an opportunity to correct in accordance with Part 2, Termination.
- (4) "Good faith" is as defined in Subsection 70A-1a-201(2)(t).
- (5) "Retailer" means a beer retailer.
- (6) "Sales territory" means the geographic area of distribution and sale responsibility designated by a distributorship agreement.
- (7) "Supplier," notwithstanding Section 32B-1-102, means a brewer or other person who sells beer to a wholesaler for resale in this state.
- (8) "Terminating party" means a supplier or wholesaler who:
 - (a) is a party to a distributorship agreement; and
 - (b) seeks to terminate or not renew the distributorship agreement.

Enacted by Chapter 276, 2010 General Session

32B-14-103 Modifying statutory requirements not permitted.

- (1) Nothing in this chapter is intended to restrict the right of a supplier to contractually require its wholesaler to comply with the supplier's operational standards of performance that are:
 - (a) consistent with this chapter; and
 - (b) uniformly established for its wholesalers according to the supplier's good faith business judgment.
- (2) Notwithstanding Subsection (1), the requirements of this chapter may not be modified by agreement.
- (3) An agreement that by its terms modifies the requirements of this chapter is void and unenforceable to the extent it attempts to modify the requirements of this chapter.

Enacted by Chapter 276, 2010 General Session

**Part 2
Termination**

32B-14-201 Termination of distributorship agreements.

- (1) Except as provided in Subsection (2) or (3), a supplier or wholesaler may not:
 - (a) terminate a distributorship agreement; or
 - (b) fail to renew a distributorship agreement.
- (2) A supplier or wholesaler may take an action prohibited by Subsection (1) if:
 - (a) the supplier or wholesaler has good cause for the action; and
 - (b) if notification is required by Section 32B-14-202:
 - (i) the terminating party provides the affected party prior notification in accordance with Section 32B-14-202; and
 - (ii) the affected party has not eliminated the reasons specified in the notification as the reasons for the action within 90 days after the date the notification is mailed in accordance with Section 32B-14-202.
- (3) A supplier may take an action prohibited by Subsection (1) if:
 - (a) the supplier gives the wholesaler 30 days written notice before termination or nonrenewal;
 - (b) the supplier discontinues production or discontinues distribution throughout the state of all brands of beer sold by the supplier to the wholesaler; and
 - (c) the termination or nonrenewal does not violate the distributorship agreement.

Enacted by Chapter 276, 2010 General Session

32B-14-202 Notice of termination.

- (1) Except as provided in Subsection (3), a terminating party may not take an action described in Subsection 32B-14-201(1) unless the terminating party provides prior notification in accordance with Subsection (2) to the affected party.
- (2)
 - (a) A terminating party shall provide the notification required under Subsection (1):
 - (i) in writing;

- (ii) by registered mail, return receipt requested; and
 - (iii) to the affected party not less than 90 days before the date on which the distributorship agreement will be terminated or not renewed.
- (b) A terminating party shall state in the notification required under Subsection (1):
- (i) the intention to terminate or not renew;
 - (ii) the reasons for the termination or nonrenewal; and
 - (iii) the date, not less than 90 days from the date of mailing, on which the termination or nonrenewal shall take effect if the reasons for the action are not eliminated by that date.
- (3) A supplier or wholesaler may take an action described in Subsection 32B-14-201(1) without furnishing prior notification if:
- (a) the affected party is insolvent, bankrupt, in dissolution, or in liquidation;
 - (b) the affected party makes an assignment for the benefit of creditors or similar disposition of substantially all of the assets of the affected party's business; or
 - (c) the affected party or a person owning more than 10% of the stock or other ownership interest in the affected party:
 - (i) is convicted of, pleads guilty to, or pleads no contest to a felony under federal law or a law of this state that in the reasonable, good faith judgment of the terminating party materially and adversely affects the good will or business of the terminating party;
 - (ii) has its license or permit revoked or suspended for a period of 31 days or more; or
 - (iii) engages in intentional fraudulent conduct in its dealings with the terminating party that in the reasonable, good faith judgment of the terminating party materially and adversely affects the good will or business of the terminating party.
- (4) Notwithstanding Subsection (3)(c)(i), a supplier may not take an action under Subsection (3)(c)
- (i) because of a conviction or plea by an owner of the affected party, if:
 - (a) any other approved owner of the affected party purchases the ownership interest of the offending owner;
 - (b) the offending owner was not materially involved in the management of the affected party; and
 - (c) the purchase described in Subsection (4)(a) is completed within 90 days after the conviction or plea.
- (5) Subsection (3)(c)(iii) does not apply to conduct by a non-owner employee or representative of the affected party if the conduct occurred without the prior knowledge or consent of an owner of the affected party.

Enacted by Chapter 276, 2010 General Session

Part 3

Operational Provisions

32B-14-301 Distributorship agreements in general.

A distributorship agreement may be for a definite or indefinite period.

Enacted by Chapter 276, 2010 General Session

32B-14-302 Prohibited conduct of supplier.

(1) A supplier may not:

- (a) induce or coerce, or attempt to induce or coerce, a wholesaler to engage in an illegal act or course of conduct;
 - (b) impose a requirement that is discriminatory by its terms or in the methods of enforcement as compared to requirements imposed by the supplier on similarly situated wholesalers;
 - (c) prohibit a wholesaler from selling a product of another supplier;
 - (d) fix or maintain the price at which a wholesaler may resell beer;
 - (e) fail to execute with each wholesaler of its brands a written distributorship agreement;
 - (f) require a wholesaler to accept delivery of beer or any other item that is not voluntarily ordered by the wholesaler;
 - (g) restrict or inhibit, directly or indirectly, the right of a wholesaler to participate in an organization representing interests of wholesalers for a lawful purpose;
 - (h) require a wholesaler to participate in or contribute to a local, regional, or national advertising fund or other promotional activity that:
 - (i) is not used for an advertising or promotional activity in the wholesaler's sales territory; or
 - (ii) would require a contribution by the wholesaler in excess of the amounts specified in the distributorship agreement;
 - (i) retaliate against a wholesaler that files a complaint with the department or the applicable federal agency regarding an alleged violation by the supplier of a state or federal statute or administrative rule;
 - (j) require without good cause a change in the manager of a wholesaler who has previously been approved by the supplier;
 - (k) if a wholesaler changes its approved manager, prohibit the change unless the new manager fails to meet the reasonable standards for similarly situated wholesalers of the supplier as stated in the distributorship agreement; or
 - (l) refuse to deliver a beer product covered by a distributorship agreement to the wholesaler:
 - (i) in a reasonable quantity; and
 - (ii) within a reasonable time after receipt of the wholesaler's order.
- (2) Notwithstanding Subsection (1)(l), the supplier may refuse to deliver a beer product if the refusal is due to:
- (a) the wholesaler's failure to pay the supplier pursuant to the distributorship agreement;
 - (b) an unforeseeable event beyond the supplier's control;
 - (c) a work stoppage or delay due to a strike or labor problem;
 - (d) a bona fide shortage of materials; or
 - (e) a freight embargo.

Enacted by Chapter 276, 2010 General Session

32B-14-303 Prohibited conduct of wholesaler.

- (1) A wholesaler may not:
- (a) induce or coerce, or attempt to induce or coerce, a retailer to engage in an illegal act or course of conduct;
 - (b) impose a requirement that is discriminatory by its terms or in the methods of enforcement as compared to requirements imposed by the wholesaler on similarly situated retailers;
 - (c) prohibit a retailer from selling a product of another wholesaler;
 - (d) fix or maintain the price at which a retailer may resell beer;
 - (e) require a retailer to accept delivery of beer or any other item that is not voluntarily ordered by the retailer;

- (f) restrict or inhibit, directly or indirectly, the right of a retailer to participate in an organization representing interests of retailers for a lawful purpose;
 - (g) require a retailer to participate in or contribute to a local, regional, or national advertising fund or other promotional activity;
 - (h) retaliate against a retailer that files a complaint with the department or the applicable federal agency regarding an alleged violation by the wholesaler of a state or federal statute or administrative rule; and
 - (i) refuse to deliver a beer product carried by the wholesaler to a properly licensed retailer who resides within the wholesaler's sales territory:
 - (i) in a reasonable quantity; and
 - (ii) within a reasonable time after receipt of the retailer's order.
- (2) Notwithstanding Subsection (1)(i), the wholesaler may refuse to deliver a beer product if the refusal is due to:
- (a) the retailer's failure to pay the wholesaler pursuant to Subsection 32B-4-704(6);
 - (b) an unforeseeable event beyond the wholesaler's control;
 - (c) a work stoppage or delay due to a strike or labor problem;
 - (d) a bona fide shortage of materials; or
 - (e) a freight embargo.

Enacted by Chapter 276, 2010 General Session

32B-14-304 Sale or transfer of business assets or ownership.

- (1) Without the prior written approval of a sale or transfer by the supplier:
- (a) a wholesaler may not sell or transfer its business, or any portion of its business, including the distributorship agreement, to a successor in interest; and
 - (b) the owner of an interest in a wholesaler may not sell or transfer all or part of the owner's interest in the wholesaler to a successor in interest.
- (2) A supplier may not unreasonably withhold or delay its approval of a sale or transfer, including the wholesaler's rights and obligations under the terms of the distributorship agreement, if the person to be substituted meets reasonable standards that are imposed:
- (a) by the supplier pursuant to the distributorship agreement; and
 - (b) on other wholesalers of that supplier of the same general class, taking into account the size and location of the sales territory and market to be served.
- (3) Notwithstanding Subsection (1), a wholesaler may not violate Subsection 32B-13-301(8).

Enacted by Chapter 276, 2010 General Session

32B-14-305 Sale or transfer of supplier's business.

- (1)
- (a) For purposes of this section, "successor" means a supplier who obtains a distribution right of a brand that a wholesaler distributes in this state pursuant to a distributorship agreement with another supplier who previously had the distribution rights of the brand.
 - (b) For purposes of Subsection (1)(a), the successor may obtain a distribution right:
 - (i) by any means, including:
 - (A) merger;
 - (B) purchase of corporate shares; or
 - (C) purchase of assets; and
 - (ii) from:

- (A) a supplier; or
 - (B) a person acting in an official capacity who is not a supplier including a nominee, representative, or fiduciary.
- (2)
- (a) A successor to a supplier that acquires a supplier's product or brand in this state is bound by the terms and conditions of each distributorship agreement with a wholesaler in this state that was in effect on the date on which the successor receives the assets or rights of the previous supplier.
 - (b) Notwithstanding Subsection (2)(a), if the requirements of Subsection (2)(c) are met, a successor may contractually require the wholesaler to:
 - (i) execute a new distributorship agreement; and
 - (ii) comply with the successor's operational standards of performance.
 - (c) A successor may impose a requirement under Subsection (2)(b) if:
 - (i) the operational standards of performance being required are consistent with this chapter;
 - (ii) the operational standards of performance being required are uniformly imposed by the successor on similarly situated wholesalers; and
 - (iii) the successor provides the wholesaler at least one year to:
 - (A) execute a new distributorship agreement; and
 - (B) comply with the operational standards of performance.

Enacted by Chapter 276, 2010 General Session

Part 4 Remedies

32B-14-401 Reasonable compensation -- Arbitration.

- (1)
- (a) If a supplier violates Section 32B-14-201 or 32B-14-304, the supplier is liable to the wholesaler for the sum of:
 - (i) the laid-in cost of inventory of the affected brands; and
 - (ii) any diminution in the fair market value of the wholesaler's business with relation to an affected brand.
 - (b) In determining fair market value, consideration shall be given to all elements of value, including good will and going concern value.
- (2)
- (a) A distributorship agreement may require that any or all disputes between a supplier and a wholesaler be submitted to binding arbitration.
 - (b) In the absence of an applicable arbitration provision in a distributorship agreement, either the supplier or the wholesaler may request arbitration if a supplier and a wholesaler are unable to mutually agree on:
 - (i) whether good cause exists for termination or nonrenewal;
 - (ii) whether the supplier unreasonably withheld approval of a sale or transfer under Section 32B-14-304; or
 - (iii) the reasonable compensation to be paid for the value of the wholesaler's business in accordance with Subsection (1).

- (c) If a supplier or wholesaler requests arbitration under Subsection (2)(b) and the other party agrees to submit the matter to arbitration, an arbitration panel shall be created with the following members:
 - (i) one member selected by the supplier in a writing delivered to the wholesaler within 10 business days of the date arbitration was requested under Subsection (2)(b);
 - (ii) one member selected by the wholesaler in a writing delivered to the supplier within 10 business days of the date arbitration was requested under Subsection (2)(b); and
 - (iii) one member selected by the two arbitrators appointed under Subsections (2)(c)(i) and (ii).
- (d) If the arbitrators fail to choose a third arbitrator under Subsection (2)(c)(iii) within 10 business days of the day on which the arbitrators under Subsections (2)(c)(i) and (ii) are selected, a judge of a district court in the county in which the wholesaler's principal place of business is located shall select the third arbitrator.
- (e) Arbitration costs shall be divided equally between the wholesaler and the supplier.
- (f) The award of the arbitration panel is binding on the parties unless appealed within 20 days from the date of the award.
- (g) Subject to the requirements of this chapter, arbitration and a proceeding on appeal are governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

Enacted by Chapter 276, 2010 General Session

32B-14-402 Judicial remedies.

- (1) A supplier or wholesaler who is a party to a distributorship agreement may maintain a civil action against the supplier or wholesaler in a court of competent jurisdiction in the county in which the wholesaler's principal place of business is located if:
 - (a) the supplier or wholesaler violates this chapter; or
 - (b)
 - (i) the supplier and wholesaler are not able to mutually agree on reasonable compensation under Section 32B-14-401; and
 - (ii) the parties do not agree to submit the matter to arbitration in accordance with Section 32B-14-401 before or within 20 days following service of process on the electing party in the civil action.
- (2)
 - (a) The prevailing party in an action under Subsection (1) shall recover:
 - (i) actual damages, including the value of the wholesaler's business as specified in Section 32B-14-401 if applicable; and
 - (ii) reasonable attorney fees and court costs.
 - (b) In addition to the amount awarded under Subsection (2)(a), the court may grant such relief in law or equity as the court determines to be necessary or appropriate considering the purposes of this chapter.
- (3) If either party elects arbitration under Subsection (1)(b)(ii) following service of process, the civil action is stayed pending a decision by the arbitration panel.

Enacted by Chapter 276, 2010 General Session