

### 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.

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