

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