

California Business and Professions Code BEER

CAL. BPC. CODE § 25000.2 : California Code - Section 25000.2 Search CAL. BPC. CODE § 25000.2 : California Code - Section 25000.2 Search by Keyword or Citation (a)For purposes of this section:

- (1)"Acquire" means to purchase, receive, assume, obtain, or otherwise come into possession or control of.
 - (2)"Affected distribution rights" means the distribution rights to the product held by the existing beer wholesaler prior to the acquisition of the right to manufacture, import, or distribute the product by the successor beer manufacturer.
 - (3)"Beer manufacturer" includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.
 - (4)"Cancel" means to terminate, reduce, not renew, not appoint or reappoint, or cause any of the same.
 - (5)"Existing beer wholesaler" means a beer wholesaler that distributes a product at the time a successor beer manufacturer acquires the rights to manufacture, import, or distribute that product.
 - (6)"Fair market value" includes all elements of value, including, but not limited to, goodwill.
 - (7)"Product" means a brand or brands of beer, as defined by Section 23006.
 - (8)"Successor beer manufacturer" means a beer manufacturer that acquires the rights to manufacture, import, or distribute a product.
 - (9)"Successor beer manufacturer's designee" means one or more distributors designated by the successor beer manufacturer to replace the existing beer wholesaler, for all or part of the existing beer wholesaler's territory, in the distribution of the product.
- (b)(1)Any successor beer manufacturer that acquires the rights to manufacture, import, or distribute a product, and who cancels any of the existing beer wholesaler's rights to distribute the product, shall comply with this section.
- (2)A successor beer manufacturer's designee shall comply with this section.
- (c)(1)The successor beer manufacturer shall notify the existing beer wholesaler of the successor beer manufacturer's intent to cancel any of the existing beer wholesaler's rights to distribute the product.

(2)The successor beer manufacturer shall mail the notice by certified mail, return receipt requested, to the existing beer wholesaler. The successor beer manufacturer shall include in the notice the name, address, and telephone number of the successor beer manufacturer's designee or designees.

(d)The successor beer manufacturer's designee shall negotiate with the existing beer wholesaler to determine the fair market value of the affected distribution rights and, if the existing beer wholesaler and the successor beer manufacturer's designee agree to the fair market value of the affected distribution rights, shall compensate the existing beer wholesaler in the agreed amount. The successor beer manufacturer's designee and the existing beer wholesaler shall negotiate in good faith.

(e)The existing beer wholesaler shall continue to distribute the product to at least the same extent that it distributed the product immediately before the successor beer manufacturer acquired rights to the product until receipt of the payment of the compensation agreed to under subdivision (d) is made or is awarded under subdivision (f). The successor beer manufacturer and the existing beer wholesaler shall act in good faith regarding the ongoing supply and distribution of the product.

(f)If the successor beer manufacturer's designee and the existing beer wholesaler are unable to mutually agree on the fair market value of the affected distribution rights within 30 days of the existing beer wholesaler's receipt of the successor beer manufacturer's notice pursuant to subdivision (c), the successor beer manufacturer's designee or the existing beer wholesaler shall initiate arbitration against each other to determine the issue of compensation for the fair market value of the affected distribution rights no later than 40 days after the existing beer wholesaler's receipt of the successor beer manufacturer's notice pursuant to subdivision (c). Upon submission to arbitration, the arbitration shall be the means of determining compensation to the existing beer wholesaler for the fair market value of the affected distribution rights, and the fair market value of the affected distribution rights shall be the purpose of the arbitration unless the parties agree otherwise.

(1)An arbitration held under this subdivision shall be held in California through a private arbitration services provider with at least three offices in California and a statewide roster of at least 70 neutral arbitrators, of which at least 30 have prior experience as a sole arbitrator in franchise, distribution, or related business litigation.

(2)The direct costs of the arbitration, including any fees charged by the arbitrator, shall be borne equally by the parties engaged in the arbitration. All other costs shall be paid by the party incurring them.

(3)The parties shall mutually agree on an arbitrator. If the parties cannot agree on the arbitrator, the arbitration provider shall select an impartial arbitrator.

(4)(A) No later than 20 days after receipt of a notification to arbitrate, the parties shall complete an initial exchange of all nonprivileged documents and other information relevant to the fair market value of the affected distribution rights in their possession and control, including, without limitation, copies of all documents and the names of individuals who may be called to testify at the arbitration hearing. No later than 45 days after receipt of notification to arbitrate, the parties shall complete an exchange of the names of any experts who may be called to testify at the arbitration hearing, together with each expert's report that may be introduced at the arbitration hearing. (B) The arbitrator may modify the requirements of subparagraph (A) on a showing of good cause. The arbitrator shall permit third-party discovery and additional discovery between beer wholesalers, including depositions, which the arbitrator finds appropriate for a period of time not to exceed 90 days after receipt of a notification to arbitrate. No discovery shall be permitted against a beer manufacturer.

(5) The decision of the arbitrator shall be final and binding on the parties unless notice of appeal is filed, within 10 business days after service of the arbitration award, with the superior court of the county in which the hearing was held. Upon filing of the appeal, the court shall review the arbitration award for errors of fact or law by determining whether the award is supported by the sufficiency of the evidence presented at the arbitration. This subdivision shall further permit any other appeal or review that is authorized by the California Arbitration Act (Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure).

(6) The arbitrator's award shall be monetary only and shall not enjoin or compel conduct.

(7) The arbitration hearing shall conclude not more than 180 days after receipt of a notification to arbitrate, unless the time period is extended by mutual agreement of the parties or by the arbitrator.

(8) The arbitrator shall render a decision not later than 15 days after the conclusion of the arbitration unless this time period is extended by mutual agreement of the parties or by the arbitrator.

(9) A party who fails to participate in the arbitration hearings waives all rights the party would have had in the arbitration and is considered to have consented to the determination of the arbitrator.

(10) The Legislature finds and declares that several unique factors in combination warrant the Legislature authorizing limited mandatory arbitration between an existing beer wholesaler and a successor beer manufacturer's designee solely to determine the issue of compensation for the fair market value of the affected distribution rights: (A) On the issue of the fair market value of the affected distribution rights, the parties are sophisticated and in an equal position in their knowledge of this legal issue and understand the law and their legal rights, including their jury trial rights. (B) The parties desire a mandatory arbitration provision to resolve the question of compensation for the fair market value of the affected distribution rights if the parties are not

able to reach a mutual settlement so that product distribution can be continued in an orderly manner and the determination of compensation can be made in a timely manner.(C)The state's regulatory interest in maintaining orderly markets for the safe and efficient transportation, distribution, and sale of beer within the state warrants the statutory authorization for mandatory arbitration as provided in this section.(g)If the existing beer wholesaler does not receive payment of the compensation under subdivision (d) or (f) not later than 10 business days after the date of the settlement or service of the arbitration award, and if there is no appeal or review filed under paragraph (5) of subdivision (f), the existing beer wholesaler shall remain the distributor of the product in the existing beer wholesaler's territory to at least the same extent that the existing beer wholesaler distributed the product immediately before the successor beer manufacturer acquired rights to the product, and the existing beer wholesaler is not entitled to the settlement or arbitration award.(h)Nothing in this section shall be construed to limit or prohibit good faith settlements voluntarily entered into by the parties subsequent to the successor beer manufacturer's notice pursuant to subdivision (c). –

See more at: <http://codes.lp.findlaw.com/cacode/BPC/1/d9/12/s25000.2#sthash.aKaQYLg1.dpuf>