

TYPICAL BEER FRANCHISE LAW PROVISIONS.

Michael D. Madigan, Esq.
Madigan, Dahl & Harlan, P.A.
222 South Ninth Street, Suite 3150
Minneapolis, MN 55402
Telephone: 612-604-2000
Facsimile: 612-604-2599
E-mail: madigan@mdh-law.com
Website: www.mdh-law.com

No Inducement or Coercion. A brewer is prohibited from inducing or coercing distributors to take the following actions:

Accepting delivery of any alcoholic beverage which the distributor did not order;
Doing anything illegal;
Limiting the distributor's right to sell the product of any other brewer; and
Refusing to supply product duly ordered.

No Dual Distribution. A brewer is prohibited from establishing two distributors for the same products in the same territories.

Brand Extension. Some Beer Franchise Laws require a brewer to assign all "brand extensions" to the underlying brand distributor. Under such laws, "Brand Extension" is defined as any brand that "(1) incorporates all or a substantial part of the unique features of a pre-existing brand of the same brewer or importer, and (2) which relies to a significant extent on the goodwill associated with pre-existing brand."

Notice of Intent to Terminate. Beer Franchise Laws typically require a brewer to give a specified written notice of intent to terminate, cancel, discontinue, or refuse to renew a Distributor Agreement. Under those laws, the notice must specify the reasons for the brewer's actions and must be sent by Certified Mail. Finally, the brewer must provide the distributor with a bona fide opportunity to cure any alleged deficiency during the notice period. There are often certain enumerated circumstances where a brewer may terminate on less notice (bankruptcy, revocation of license, conviction of a crime, etc.)

Termination of Distributor Agreements. A brewer may not amend, cancel, terminate, or refuse to continue to renew a distributor agreement unless the brewer:
has satisfied the notice and opportunity to cure requirements;
has acted in good faith; and
has good cause.

“Good cause” is often defined as a “failure by the distributor to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed on the distributor by the brewer, where the failure was discovered by brewer not more than one year before the date on which the brewer gave notice to the distributor.”

Obligations of Succession. Many Beer Franchise Laws provide that a purchaser of or “successor” to a brewer must abide by the terms and conditions of the Distribution Agreement in effect at the time of succession. Thus, if a brewer buys another brewer or if an importer assumes the importation rights from another importer, they become obligated to the terms and conditions of an existing Agreement. *See Arneson Distribution Co., et al v. Miller Brewing Company*, 117 F.Supp.2d 905 (D. Minn. 2000). Some beer franchise laws, however, permit a “successor” brewer to terminate an existing distributor if the distributor is paid fair market value for the distribution rights. These “successor” provisions have been the subject of several recent lawsuits.

Assignment, Transfer, or Sale of Business. No brewer may unreasonably withhold consent to any assignment, transfer, or sale of the distributor’s business whenever the distributor to be substituted meets the material and reasonable qualifications required of all distributors to be substituted meets the material and reasonable qualifications required of all distributors. Under many Beer Franchise Laws, an issue exists as to whether only a licensed beer distributor could bring suit under the Law or whether a prospective Buyer who has not yet been approved or licensed may bring suit under the Law.

Management. A brewer is prohibited from requiring or prohibiting a change in distributor management unless the current or potential management fails to meet reasonable qualifications and standards required by the brewer. Accordingly, in order to require or prohibit a change in management, a brewer must show that the current proposed manager does not meet the qualifications established by the brewer for all distributors and that said qualifications are reasonable

No Discrimination. A brewer is prohibited from discriminating among its distributors in any business dealings including pricing unless the classification is based upon reasonable grounds. Accordingly, a brewer must offer its product to all distributors in the state on the same basis. Depending on the specific state law, this may permit volume discounts but the discounts must be offered to all distributors.

Price of Product. A brewer is prohibited from fixing the price at which the distributor may sell to retail. Under the 21st Amendment, this provision may authorize the state to regulate pricing by brewers to a greater degree than may exist in other industries.

Retaliatory Action Prohibited. A brewer is prohibited from taking retaliatory action against a distributor who either refuses to violate the beverage alcohol regulations or files a complaint regarding said violations.

No Waiver. Beer Franchise Laws typically prohibit a brewer from requiring a distributor in a Distribution Agreement to waive compliance with any provision of the Law.

Right of Free Association. Beer Franchise Laws typically prohibit a brewer from restricting, directly or indirectly, the right of free association among distributors.

Judicial Remedies. Beer Franchise Laws typically provide that a distributor may commence an action against a brewer who violates the law. The distributor may recover actual damages, costs, and disbursements. Under such laws, if a brewer acts in bad faith, a distributor may also recover punitive damages and attorney's fees. The laws also often provides that a distributor may bring the suit in a court in the state and the distributor's right to do so may not be waived in a Distributor Agreement. This provision may also give the distributor the right to litigate even if he has signed an agreement with an arbitration clause.