

244.606 Contents of agreement among brewer, importer, and distributor -- Conditions for transfer of brands from brewer or importer -- Conditions for termination -- Duties -- Damages.

- (1) Every brewer and importer of malt beverages shall contract and agree in writing with each of its distributors to provide and specify the rights and duties of the brewer, the importer, and the distributor with and in regard to the sale of the products of the brewer or the importer within the Commonwealth of Kentucky. The terms and provisions of the contracts shall comply with and conform to KRS 244.602 to 244.606 and to all other applicable statutes.
- (2) If a particular brand or brands of malt beverage are transferred by purchase or otherwise from a brewer or importer, the successor brewer or importer, and the successor brewer's or importer's designee, shall comply with the following:
 - (a) The successor brewer or importer shall notify the existing distributor of the successor's intent not to appoint the existing distributor for all or a part of the existing distributor's territory for the product. The successor shall mail the notice of termination by certified mail, return receipt requested, to the existing distributor. The successor shall include in the notice the names, addresses, and telephone numbers of the successor's designees;
 - (b) A successor's designee shall negotiate with the existing distributor to determine the fair market value of the existing distributor's right to distribute the product in the existing distributor's territory immediately before the successor acquired rights to the particular brand or brands of malt beverage. For the purposes of this paragraph, fair market value shall be the value that would be determined in an arm's length transaction entered into without duress or threat of termination of the existing distributor's right and shall include all elements of value, including goodwill and going-concern value;
 - (c) The existing distributor shall continue to distribute the product until payment of the compensation agreed to under paragraph (b) of this subsection or awarded under paragraph (d) of this subsection is received;
 - (d) The successor's designee and the existing distributor shall negotiate in good faith. If the parties fail to reach an agreement not later than thirty (30) days after the existing distributor receives the notice under paragraph (a) of this subsection, the successor's designee or the existing distributor may send a written notice to the other party and the American Arbitration Association, or its successor in interest, declaring the party's intention to proceed with final and binding arbitration administered by the American Arbitration Association under the American Arbitration Association's Commercial Arbitration Rules. Thereafter, an arbitration shall be held for the purpose of determining the fair market value of the existing distributor's right to distribute the product in the existing distributor's territory immediately before the successor acquired rights to the particular brand or brands of malt beverage. For the purpose of this paragraph, fair market value shall be the value that would be determined in an arm's length transaction entered into without duress or threat of termination of

the existing distributor's right and shall include all elements of value, including goodwill and going-concern value;

- (e) Notice of intent to arbitrate shall be sent, as provided in paragraph (d) of this subsection, not later than thirty-five (35) days after the existing distributor receives notice under paragraph (a) of this subsection. The arbitration proceeding shall conclude not later than forty-five (45) days after the date the notice of intent to arbitrate is mailed to a party;
- (f) Any arbitration held pursuant to this subsection shall be conducted in the city within Kentucky that:
 - 1. Is closest to the existing distributor; and
 - 2. Has a population of more than twenty thousand (20,000);
- (g) Any arbitration held pursuant to this subsection shall be conducted before one (1) impartial arbitrator to be selected by the American Arbitration Association. The arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association;
- (h) An arbitrator's award in any arbitration held pursuant to this subsection shall be monetary only and shall not enjoin or compel conduct. Any arbitration held pursuant to this subsection shall be instead of all other remedies and procedures;
- (i) The cost of the arbitrator and any other direct costs of any arbitration held pursuant to this subsection shall be equally divided by the parties engaged in the arbitration. All other costs shall be paid by the party incurring them;
- (j) The arbitrator in any arbitration held pursuant to this subsection shall render a decision not later than thirty (30) days after the conclusion of the arbitration, unless this time period is extended by mutual agreement of the parties or by the arbitrator. The decision of the arbitration is final and binding on the parties. Under no circumstances may the parties appeal the decision of the arbitrator;
- (k) A party who fails to participate in the arbitration hearings in any arbitration held pursuant to this subsection waives all rights the party would have had in the arbitration and is considered to have consented to the determination of the arbitrator;
- (l) If the existing distributor does not receive payment from the successor's designee of the compensation under paragraph (b) or (d) of this subsection not later than thirty (30) days after the date of the settlement or arbitration award:
 - 1. The existing distributor shall remain the distributor of the product in the existing distributor's territory to at least the same extent that the existing distributor distributed the product immediately before the successor's designee acquired rights to the product; and
 - 2. The existing distributor is not entitled to the settlement or arbitration award;
- (m) Nothing in this section shall be construed to limit or prohibit good-faith settlements voluntarily entered into by the parties; and

- (n) Nothing in this section shall be construed to give the existing distributor or a successor's designee any right to compensation if the existing distributor or successor's designee is terminated by a brewer or importer pursuant to subsection (4) of this section.
- (3) The terms or provisions of any contract or agreement among any brewers, importers, or distributors, including contracts or agreements entered into after July 13, 2004, and any renewals or extensions of contracts existing prior to July 13, 2004, shall not permit a brewer or importer of malt beverages to, nor may any brewer or importer:
- (a) Terminate, refuse to renew, or refuse to enter into an agreement, in part or in whole, with a distributor, except for good cause and in good faith;
 - (b) Terminate, refuse to renew, or refuse to enter into an agreement, in part or in whole, with a distributor without first giving the distributor written notice of any alleged deficiency on the part of the distributor and giving the distributor a reasonable opportunity of sixty (60) to one hundred twenty (120) days to cure the alleged deficiency;
 - (c) Unreasonably withhold timely consent to a proposed sale or transfer, in part or whole, of the stock or assets of the distributor, and in no event shall the brewer take more than thirty (30) days to approve or disapprove the proposed sale or transfer after the brewer has received written notice of the proposal from the distributor and received all requested information from the distributor to enable the brewer to pass upon the proposed sale or transfer;
 - (d) Assign an agreement, in part or in whole, with a distributor, except with consent from the distributor which shall not be unreasonably withheld. No consent is required where the distributor has proposed to transfer an ownership interest in its business and the brewer exercises its right to purchase this ownership interest in accordance with a written agreement between the brewer and distributor, subject to the brewer or its designee purchasing the ownership interest at the price and on the conditions applicable to the proposed change.
 - (e) Enter into a contract with more than one (1) distributor to sell any of its products or brand within the same territory or area at the same time. This paragraph shall not apply to contracts entered into prior to January 1, 2004, or future renewals of such contracts, to the extent the existing contract and the future renewal allow different distributors to sell certain but not all of the brewer's or importer's brands or brand extensions within the same territory or area at the same time;
 - (f) Unilaterally amend its agreement, or any document referred to or incorporated by reference in its agreement, with any distributor, except modifications contemplated by the brewer-distributor agreement which modifications occur after written notice to the distributor or amendments that occur by a brewer after having consulted with an advisory panel of distributors;

- (g) Terminate an agreement with a distributor because the distributor refuses or fails to accept an unreasonable amendment to the agreement proposed by the brewer or importer;
 - (h) Require a distributor to arbitrate disputes which may arise between it and the brewer or the importer;
 - (i) Preclude a distributor from litigating in state or federal courts located in Kentucky or from litigating under the laws of the Commonwealth;
 - (j) Unreasonably discriminate or retaliate against its distributor in the application of the terms of a written agreement;
 - (k) Unreasonably fail to consent to the distributor's designation of an individual as the distributor's manager or successor-manager in accordance with nondiscriminatory and reasonable qualifications and standards; or
 - (l) Withdraw approval of an individual as the distributor's manager or successor-manager without just cause.
- (4) Notwithstanding the provisions in subsection (3) of this section, a brewer or importer of malt beverages may terminate an agreement with a distributor if any of the following occur:
- (a) The assignment or attempted assignment by the distributor for the benefit of creditors, the institution of proceedings in bankruptcy by or against the distributor, the dissolution or liquidation of the distributor, the insolvency of the distributor or the distributor's failure to pay for malt beverages in accordance with the agreed terms;
 - (b) Failure of any owner of the distributor to sell his or her ownership interest within one hundred twenty (120) days after the later of the owner having been convicted of a felony which, in the sole judgment of the brewer, may adversely affect the goodwill or interests of the distributor or the brewer, or the brewer learns of the conviction;
 - (c) Fraudulent conduct of the distributor in any of its dealings with the brewer or the brewer's products;
 - (d) Revocation or suspension for more than thirty-one (31) days of the distributor's federal basic permit or any state or local license required of the distributor for the normal operation of its business;
 - (e) Sale of malt beverages by a distributor outside its sales territory prescribed by the brewer in accordance with KRS 244.585; or
 - (f) Without brewer consent, the distributor engaging in changes in ownership or possession of ownership interests, the establishment of trusts or other ownership interest, entering into buy-sell agreements, or granting an option to purchase an ownership interest.
- (5) During the term of a contract or agreement between the brewer or importer and a distributor, including contracts or agreements in existence prior to July 13, 2004, the distributor shall, in accordance with the provisions of such contract or agreement, maintain physical facilities and personnel so that the product and brand of the brewer or importer are properly represented in the territory of the distributor,

the reputation and trade name of the brewer or importer are reasonably protected, and the public is serviced. The brewer, importer, and distributor shall act in good faith at all times during the term of the contract or agreement.

- (6) Any brewer, importer, or distributor who violates any provision of this section shall pay the injured brewer, importer, or distributor all reasonable damages sustained by it as a result of the brewer's, importer's, or distributor's violations, together with the costs and attorney's fees incurred by the brewer, importer, or distributor in protecting its right. If a brewer or importer violates subsection (3)(a), (b), or (g) of this section, the injured distributor's reasonable damages shall be the fair market value of the distributor's business. In determining the fair market value of the distributor's business, proper and full consideration shall be given to all elements of value, including goodwill and going-concern value.

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