

Senate Bill 239

Sponsored by Senators THOMSEN, OLSEN (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows minor supplier of malt beverages to unconditionally terminate wholesale distribution agreement upon 90 days' notice. Limits types of payments due from minor supplier to distributor upon termination of agreement.

Allows minor supplier to have agreements with multiple distributors within same territory.

A BILL FOR AN ACT

1
2 Relating to malt beverage distribution agreements; creating new provisions; and amending ORS
3 474.011 and 474.115.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 474.005 to**
6 **474.095.**

7 **SECTION 2. (1) As used in this section, "minor supplier" means a malt beverage man-**
8 **ufacturer that:**

9 (a) **Does not sell more than 7,500 barrels annually to the same distributor; and**

10 (b) **Does not supply more than 20 percent by volume of the malt beverages annually dis-**
11 **tributed by the distributor.**

12 (2) **Unless the terms of a wholesale distribution agreement provide otherwise, a minor**
13 **supplier may enter into agreements with multiple wholesale distributors within a territory.**

14 **A minor supplier shall charge the same prices for malt beverages to each distributor.**

15 (3) **A minor supplier may terminate a wholesale distribution agreement upon 90 days'**
16 **notice without having good cause as defined in ORS 474.011 and without paying compensation**
17 **to the distributor for the goodwill of the business.**

18 (4) **The ability of a minor supplier to terminate an agreement under subsection (3) of this**
19 **section is in addition to any other grounds provided by law for supplier termination of a**
20 **wholesale distribution agreement. Termination of an agreement under subsection (3) of this**
21 **section does not constitute interference or delay for purposes of ORS 474.045. ORS 474.075**
22 **does not apply to the termination of an agreement under subsection (3) of this section.**

23 **SECTION 3. ORS 474.011 is amended to read:**

24 474.011. (1) [*No*] **Except as provided in section 2 of this 2019 Act, a supplier [*shall*] may not**
25 **terminate, cancel or fail to renew a distribution agreement upon expiration of its term or refuse to**
26 **continue under the agreement without good cause. Good cause exists when a wholesaler fails to**
27 **comply with a provision of the written agreement that is both reasonable and of material signif-**
28 **icance to the business relationship between the supplier and the wholesaler and all of the following**
29 **occur:**

30 (a) **The supplier gave written notice to the wholesaler of the failure to comply within two years**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 of acquiring knowledge of the breach;

2 (b) The written notice alerted the wholesaler of the failure to comply with the agreement, the
3 intent to terminate and the reasons therefor, and the date the termination would occur, which shall
4 be not less than 90 days after the wholesaler's receipt of the notice;

5 (c) The wholesaler has been given 30 days in which to submit a plan of corrective action to
6 comply with the agreement and not less than an additional 60 days to correct the noncompliance;
7 and

8 (d) The supplier acted in good faith.

9 (2) *[In the event that]* **If** a wholesale distribution agreement is terminated by a supplier, the
10 wholesaler shall be entitled to reasonable compensation from the supplier for the laid-in cost to the
11 wholesaler of the inventory of the supplier's products, including any taxes paid on the inventory by
12 the wholesaler, together with a reasonable charge for handling of the products.

13 (3) *[In the event that]* **If** a wholesaler is terminated by a supplier *[in bad faith or]* for other than
14 good cause, the wholesaler shall be entitled to additional compensation from the supplier for:

15 (a) The fair market value of any and all assets, including ancillary businesses of the wholesaler
16 used in distributing the supplier's products.

17 (b) **Except as provided in section 2 of this 2019 Act**, the goodwill of the business.

18 (4) The total compensation to be paid by the supplier to the wholesaler shall be reduced by any
19 sum received by the wholesaler from sale of assets of the business used in distribution of the
20 supplier's products as well as by whatever value such assets may have to the wholesaler that are
21 unrelated to the supplier's products.

22 (5) As used in subsection (3) of this section, "fair market value" means the highest dollar amount
23 at which a seller would be willing to sell and a buyer willing to buy when each possesses all infor-
24 mation relevant to the transaction.

25 **SECTION 4.** ORS 474.115 is amended to read:

26 474.115. (1) It shall be unlawful for any wholesaler to sell any brand of malt beverage in this
27 state except in the territory described in an agreement with the manufacturer or importer author-
28 izing sale by the wholesaler of the brand within a designated territory. Within the designated ter-
29 ritory the wholesaler must service as provided in subsection (2) of this section all of the customers
30 without discrimination. The territorial agreement must be in writing and must specify the brand or
31 brands it covers. Where a manufacturer or importer sells several brands, the agreement need not
32 apply to all brands sold by the manufacturer or importer and may apply only to one brand. *[No]*
33 **Except as provided in section 2 of this 2019 Act**, a manufacturer or importer *[shall]* **may not**
34 provide by the written agreement for the distribution of a brand to more than one distributor for
35 all or any part of the designated territory. All such agreements shall be filed with the Oregon Li-
36 quor Control Commission.

37 (2) Every malt beverage wholesaler licensed shall service for the purpose of quality control all
38 of the malt beverages it sells to its customers. Each wholesaler shall provide quality control services
39 and comply with quality control standards as are specified in writing from time to time by the owner
40 of the trademark of the brand or brands of malt beverage if:

41 (a) These services or standards are reasonable and are reasonably related to the maintenance
42 of quality control; and

43 (b) The wholesaler has received written notice of them.

44 (3) An exclusive territorial designation in any agreement shall be changed only upon the written
45 notice of the manufacturer and shall be filed pursuant to this section and ORS 474.105. The com-

1 mission shall require the manufacturer to verify that the level of service within the designated ter-
2 ritory will not be affected by the change. The notice shall only be given after recognizing all rights
3 of the wholesaler and duties of the manufacturer contained in any written agreement between them.
4 However, if a wholesaler is prevented from servicing the territory due to fire, flood, labor disputes
5 or other causes beyond reasonable control, and if first given permission by the duly licensed exclu-
6 sive wholesaler of that area and approved by the manufacturer and the commission, another licensed
7 wholesaler not within the designated area may sell the specified brands of malt beverage in that
8 designated area.

9 (4)(a) It shall be unlawful for any wholesaler, either directly or indirectly, to grant or to afford
10 a quantity discount in connection with the sale of malt beverages to any retailer in this state.

11 (b) No provision of any agreement between any manufacturer and importer shall expressly or
12 by implication, or in its operation, establish or maintain the resale price of any brand or brands of
13 malt beverage by the wholesaler.

14 **SECTION 5. Section 2 of this 2019 Act and the amendments to ORS 474.011 and 474.115**
15 **by sections 3 and 4 of this 2019 Act apply to wholesale distribution agreements entered into,**
16 **renewed or extended on or after the effective date of this 2019 Act.**

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