

Beer Franchise Law Summary

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Before entering a relationship with a beer wholesaler, a brewery should become familiar with the state laws that regulate brewer-wholesaler relationships. Such “beer franchise laws” frequently dictate many terms of a brewer-wholesaler “agreement,” trumping contrary terms in any contract. What follows is a brief discussion of the “typical” beer franchise law, followed by a survey of beer franchise law in each of the fifty states, plus the District of Columbia.

This summary necessarily omits or generalizes many aspects of the states’ regulation of brewer-wholesaler relations. Moreover, laws may be amended and are invariably the subject of court cases, regulations, and informal “interpretations” by alcohol control authorities that can substantially change a law’s actual effect. Always seek the professional advice of a competent lawyer before drafting a contract, terminating a wholesaler, or initiating other legal action.

For simplicity and readability, the summary uses plain English terms wherever possible. This may mask subtle complexities and distinctions. Thus, although the summary discusses a brewery’s ability to “terminate” a wholesaler, legal restrictions applied in termination situations may also restrict cancellations, failures to renew, and/or attempts to modify a distribution agreement. Another example is the term insolvent, which is used below to encompass an assignment for the benefit of creditors and voluntary or involuntary bankruptcy. Finally, this summary is written with domestic small brewers in mind, and discusses a “brewer’s” rights and obligations. In reality, beer franchise laws generally apply to any beer supplier, including importers acting as a wholesaler’s supplier.

The state-by-state summary focuses on the provisions that are likely to be of paramount importance to a small brewer entering into a new franchise relationship: (1) written agreement obligations; (2) exclusivity requirements or prohibitions; and (3) termination provisions. I have therefore passed over a great many beer franchise law provisions, both common and uncommon. To give a sense of the provisions that are often encountered, I begin with an overview of a “typical” beer franchise law.

The “Typical” Beer Franchise Law

A majority of the states have enacted full-fledged beer franchise laws. Although it is not hard to detect a whiff of protectionism in these enactments, their stated purpose is to correct the perceived imbalance in bargaining power between brewers (who are

presumed to be big and rich) and wholesalers (who are presumed to be small and local). Temperance concerns are also cited. A full-fledged beer franchise law will usually:

1. Define franchise agreements to include informal, oral arrangements, making any shipment to a wholesaler the start of a franchise relationship.
2. Prohibit coercive brewer practices, most often including actions in which a brewer (a) requires the wholesaler to engage in illegal acts, (b) forces acceptance of unordered beer, or (c) withholds shipments in order to impose terms on the wholesaler.
3. Require “good cause” or “just cause” before a brewer can terminate a wholesaler.
 - The burden is generally on the brewer to demonstrate cause for termination.
 - “Good cause” is usually defined to include a significant breach of a “reasonable” and “material” term in the parties’ agreement.
4. Dictate that a brewer give prior written notice (60 or 90 days is common) to a wholesaler before termination is effective, with the notice detailing the alleged deficiencies that justify termination.
5. Grant wholesalers an opportunity to cure the deficiencies alleged in a termination notice, with termination ineffective if a wholesaler cures the defect(s) or presents a plan to cure the defect(s).
 - “Notice-and-cure” requirements usually are waived under certain circumstances. These most often include a wholesaler’s (a) insolvency, (b) conviction or guilty plea to a serious crime, or (c) loss of a license to do business. Many franchise laws also permit expedited termination where a wholesaler (d) has acted fraudulently or (e) has defaulted on a payment under the agreement despite a written demand for payment.
6. Require wholesalers to provide brewers with notice of any proposed change in ownership of the wholesaler, giving the brewer an opportunity to object. The brewer’s approval of an ownership change cannot be “unreasonably” withheld.
 - Brewers usually have little or no right to block a transfer to a previously designated family successor.
7. Create remedies for unfair termination, generally granting wholesalers the right to receive “reasonable compensation” following termination.

- Most beer franchise laws grant wholesalers the right to seek an injunction that, if granted, would quickly halt termination proceedings pending the resolution of wrongful termination claims. The forum for such relief can be either a state court or the state's alcohol control authorities.
 - Although arbitration of the entire dispute is not required, and sometimes prohibited, disputes over what constitutes "reasonable compensation" often must be arbitrated at the request of a party.
 - Even if the franchise law prohibits arbitration, an arbitration clause in the parties' written agreement is likely enforceable under the Federal Arbitration Act if the parties reside in different jurisdictions.
8. Declare any waiver of franchise law protections void and unenforceable.
 9. Set a date that the law becomes effective. Some franchise agreements may predate franchise acts' effective dates, likely making the franchise law inapplicable to that agreement.

In addition to the extremely common provisions described above, other terms may:

10. Require beer franchise agreements to be in writing.
11. Mandate that sales territories be exclusive.
 - Wholesalers may face substantial penalties for making deliveries outside their designated territory, and such conduct may permit expedited termination by the brewer.
 - Territorial designations may need to be filed with state liquor control authorities.
12. Restrict a brewer's ability to dictate prices, with restrictions that often go beyond the strictures of antitrust law. Common provisions prohibit brewer price fixing, require brewers to file and adhere to periodic price schedules, and ban price discrimination between wholesalers within the state.
13. Provide that the prevailing party in a termination dispute will be compensated for its attorneys fees.

14. Bind succeeding brand owners to existing franchise agreements, although some permit not-for-cause termination after a change in brand ownership, as long as compensation is paid.
15. Impose a good faith obligation on both parties. Under modern contract law, this good faith obligation is already implied in all contractual relations.
16. Impose specific obligations on wholesalers, occasionally specified to include a duty to properly rotate stock, maintain tap lines, and comply with other reasonable quality control instructions.

Most states have enacted at least a few laws that regulate brewer-wholesaler relations. In some, beer wholesalers are covered by a franchise law protecting all alcohol beverage wholesalers. In a few states, beer wholesalers are protected by franchise laws that apply to a variety of franchise relationships, from beer to burgers. Still others partially regulate beer franchise relationships through their alcohol control laws by, for example, requiring exclusive territories as a condition for licensing. Finally, a few states and the District of Columbia have, to date, left brewer-wholesaler relations essentially unregulated, thereby allowing the franchise relationship to be governed exclusively by the terms of the parties' agreement, to be enforced under general contract law principles.

Summary of Selected State Franchise Law Provisions

1. **ALABAMA** Ala. Code §§ 28-8-1 to 28-9-11.
 - Written agreement required.
 - Exclusive territories.
 - State approval required before a brand is transferred.
 - Termination upon 60 days' notice, with wholesaler allowed to submit a plan for cure within 30 days and to cure defects within 120 days.
 - Immediate termination where wholesaler becomes insolvent, loses license for more than 61 days, or is convicted of a felony.
 - Termination on 15 days' notice for fraudulent conduct, sales outside territory, failure to pay after a written demand for payment, or a transfer of the business without brewer's permission.
 - Termination must be made in good faith and for good cause.
 - Good cause includes failure to comply with agreement provision that are reasonable and of material significance.
2. **ALASKA**
 - No beer franchise law.

3. **ARIZONA** Ariz. Rev. Stat. §§ 44-1565 to 44-1567.
 - Exclusive territories are permitted, but not required.
 - Termination must be made in good faith and for good cause.
 - Good cause includes a failure to comply with a term in the franchise agreement, unless that term is unconscionable or requires an illegal act.
4. **ARKANSAS** Ark. Code Ann. §§ 3-5-1101 to 3-5-1111 and § 3-5-1416.
 - Exclusive territories, filed with the State.
 - Termination requires 30 days' notice with opportunity to cure.
 - No termination without good cause and good faith.
 - Good cause includes a wholesaler's insolvency, repeated violations of law, or failure to maintain a reasonable sales volume.
 - Immediate termination permitted for a number of reasons, including insolvency, license loss for more than 31 days, and sales outside of the wholesaler's territory.
 - Small brewery (less than 30,000 barrels a year) is not a supplier and exempted from the above provisions.
5. **CALIFORNIA** Cal. Bus. & Prof. Code §§ 25000.2 to 25000.9.
 - Territorial appointments must be in a written agreement, filed with the State.
 - Regardless of the parties' agreement, supplier may not terminate a wholesaler solely for wholesaler's "failure to meet a sales goal or quota that is not commercially reasonable under prevailing market conditions."
 - Some brewer-wholesaler relationships, particularly those involving large brewers, might be covered under California's general Franchise Relations Act.
 - A manufacturer that unreasonably withholds consent to transfer can be liable for damages.
 - Recent unpublished Attorney General letter suggested that manufacturer approval rights over wholesaler personnel decisions and business plans, impositions of changes to wholesaler standards or agreements, control over other manufacturers' brands, and control of wholesaler ownership changes are unlawful under the California Alcoholic Beverage Control Act.
 - In *Crown Imp., LLC v. Classic Distrib. & Beverage Grp., Inc., to be published* Cal. App. 3d (2014), the court found that even if you interpret the letter to disallow for a manufacture to unreasonably withhold consent to a sale of the distributorship, the law specifically allows for this and a specific statue controls.
6. **COLORADO** Colo. Rev. Stat. §§ 12-47-405 to 12-47-406.3.

- Exclusive territories in a written contract, filed with the State.
- Franchise protections applicable to manufacturers producing at least 300,000 gallons of malt beverages annually.
- Termination upon 60 days' notice, with wholesaler opportunity to cure during that period.
 - Grounds for immediate termination include failure to pay after written demand, insolvency, license loss for more than 14 days, fraud, and sales outside of the wholesaler's territory.
 - Not-for-cause termination permitted upon 90 days' written notice, with copies to all other wholesalers in all other states with the same agreement.

7. **CONNECTICUT** Conn. Gen. Stat. § 30-17.

- Franchise protections apply following product distribution for more than six months.
- Termination in writing, setting forth reasons and giving the wholesaler an opportunity to challenge.
 - Prior to termination, a brewer may appoint a replacement wholesaler, provided that the appointment is not effective until six months after the wholesaler receives notice of termination.
- Termination for "just and sufficient cause," to be determined in a hearing before the Liquor Control Commission.

8. **DELAWARE** Del. Code Ann. tit. 6, §§ 2551 to 2556; 4 Del. Code Regs. § 46.

- Territorial arrangements filed with the State.
- Where parties have an exclusive arrangement, brewer must obtain ABCC consent before appointing a second distributor.
- Termination upon 60 days' notice, with wholesaler opportunity to cure during the notice period.
- Good cause is required to terminate a wholesaler without paying "reasonable compensation," which includes the laid-in cost of inventory and goodwill.
 - Good cause includes, among others, a wholesaler's refusal to comply with a material provision of the franchise that is essential, fair, and reasonable; failure to meet reasonable and fair performance standards; insolvency; and license loss for more than 30 consecutive business days.
 - Not-for-cause termination is allowed, provided the brewer receives the permission of the Commission to pay "reasonable compensation" and the termination does not violate the terms of the franchise agreement.

9. **DISTRICT OF COLUMBIA**

- No beer franchise law.

10. **FLORIDA** Fla. Stat. §§ 563.021 to 563.022.
 - Exclusive sales territories, in writing, and filed with the State.
 - Termination upon 90 days' notice, with wholesaler permitted to cure defects within the notice period.
 - Termination without good cause is forbidden.
 - Good cause includes a violation of a reasonable and material contract term.
 - Termination upon 15 days' notice is allowed in certain instances such as insolvency, license loss for more than 60 days, fraud, and sales outside of the wholesaler's territory.

11. **GEORGIA** Ga. Code Ann. §§ 3-5-29 to 3-5-34; Ga. Comp. R. & Regs. 560-2-5.10.
 - Exclusive sales territories, filed with the State.
 - Termination notice containing specific reasons for termination must be filed with the State, giving the State and wholesaler 30 days to object and request a hearing. Georgia Department of Revenue decides whether to allow a termination.
 - Justifications for termination include a wholesaler's financial instability, repeated violations of law, or failure to maintain sales volume that is reasonably consistent with other wholesalers of the brand.

12. **HAWAII**
 - No beer franchise law.

13. **IDAHO** Idaho Code Ann. §§ 23-1003; 23-1101 to 23-1113.
 - Territorial agreements must be filed with the State.
 - Termination upon 90 days' notice, with 30 days to submit a plan of corrective action and an additional 90 days to cure defects.
 - Termination without notice-and-cure permitted upon the wholesaler's bankruptcy, conviction of a felony, loss of license for more than 30 days, sales outside of the wholesaler's territory, transfer without consent, failure to pay within five business days of written demand for payment, or fraud.

14. **ILLINOIS** 815 Ill. Comp. Stat. 720/1 to 720/10.
 - Written contract required.
 - Exclusive territories permitted.

- Termination upon 90 days' notice, with opportunity for the wholesaler to cure within notice period.
 - Immediate termination permitted for wholesaler's insolvency, default on payments, conviction of a serious crime; attempt to transfer business without approval, permit revocation or suspension, or fraud in dealing with the brewer.
- Termination must be for good cause, following good faith efforts to resolve disagreements.
 - Good cause includes failure to comply with essential and reasonable requirements of the franchise agreement that are consistent with the law.
- A brewer may not discriminate among wholesalers when enforcing agreements with wholesalers.
- Small suppliers whose annual volume of beer products supplied represents 10% or less of wholesaler's entire business have a mechanism to terminate upon payment of reasonable compensation to the wholesaler.
 - Compensation, if not agreed upon, subject to a potentially lengthy arbitration or litigation process. Pending bill (as of April 2014) seeks to amend to permit termination in 6 months while process proceeds.

15. **INDIANA** Ind. Code §§ 7.1-5-5-9.

- Exclusive territories permitted, not required.
- Prohibits unfair terminations by suppliers or wholesalers, described as those without due regard for "the equities of the other party."
- Currently pending legislation (as of April 2014) would allow a "small brewer" of less than 30,000 barrels to terminate the agreement without cause with notice and payment of a multiple of gross profit. Number is based on the timing of the termination.

16. **IOWA** Iowa Code §§ 123A.1 to 123A.12.

- Written agreement with exclusive territories required.
- Termination upon 90 days' notice, with the wholesaler given 30 days to submit a plan to correct deficiencies within 90 days.
 - Immediate termination permitted upon a wholesaler's failure to pay when due after written demand, insolvency, dissolution, conviction of a crime that would adversely affect its ability to sell beer, an attempted transfer without approval, fraudulent conduct in dealing with the brewer, license loss for more than 31 days, or sales outside the territory.
- Termination must be in good faith and supported by good cause.
 - Good cause exists if the wholesaler failed to comply with reasonable and materially significant requirements of the agreement that are legal and do

not discriminate as compared with the requirements imposed on or enforced against similarly-situated wholesalers.

- Good faith means honesty in fact and the observance of reasonable standards of fair dealing in the trade, as interpreted under Iowa's Uniform Commercial Code.

17. **KANSAS** Kan. Stat. Ann. § 41-410.

- Agreements must be in writing.
- Exclusive territories, filed with the State.
- Termination must be for reasonable cause.
 - Must file written termination notice with the agency at least 30 days before the effective termination date.

18. **KENTUCKY** Ky. Rev. Stat. Ann. §§ 244.585; 244.602 to 244.606.

- Written contract, designating exclusive territories, filed with the State.
- Good cause and good faith required for termination
- Termination upon written notice and reasonable opportunity (60 to 120 days) to cure.
 - Grounds for termination include insolvency, felony conviction, fraud, license loss for more than 31 days, sales outside of the wholesaler's territory, and ownership change without consent.

19. **LOUISIANA** La. Rev. Stat. Ann. §§ 26:801 to 812.

- Written agreement required.
- Exclusive territories.
- Termination upon 30 days' notice, with termination ineffective if the wholesaler produces a plan for corrective action within the notice period that will cure the defect within 90 days.
 - Immediate termination permitted for numerous contingencies, including a wholesaler's insolvency, loss of license, conviction of a serious crime, or fraudulent conduct towards the brewer.
- Termination for good cause only.
 - Good cause includes wholesaler's failure to comply with a reasonable and material term of the agreement.

20. **MAINE** Me. Rev. Stat. Ann. tit. 28-A, §§ 1451 to 1465.

- Exclusive territories, filed with the State.
- Termination requires at least 90 days' notice, plus a reasonable time to cure.

- Immediate termination permitted upon wholesaler's bankruptcy, loss of license, or conviction of a serious crime.
- Termination must be for good cause.
 - Good cause does not include a change in wholesaler ownership, but includes a wholesaler's loss of license, insolvency, or failure to substantially comply with reasonable and material terms of the agreement.

21. **MARYLAND** Md. Code Ann., art. 2B, §§ 17-101 to 17-107.

- Exclusive territories.
- Termination upon 180 days' notice, with 180 days for the wholesaler to cure any deficiency.
 - No notice required to terminate for a wholesaler's insolvency.
- Termination must be for good cause.
 - Good cause always includes a wholesaler's loss of license.

22. **MASSACHUSETTS** Mass. Gen. Laws. ch. 138, § 25E.

- No refusals to sell after six months of regular sales.
- Termination upon 120 days' notice to wholesaler and the State.
 - Termination may be suspended upon wholesaler's request, pending a hearing before the Alcoholic Beverage Control Commission.
 - Pending bill (as of April 2014) would allow for a quicker hearing by the Commission.
- Termination only for good cause.
 - Good cause limited to wholesaler's disparagement of the brewer's product, unfair preference of a competing brand, failure to exercise best efforts, encouragement of improper practices, or failure to comply with contract terms.

23. **MICHIGAN** Mich. Comp. Laws §§ 436.1401; 436.1403.

- Written agreement with exclusive territories.
- Termination upon written notice, with the wholesaler having 30 days in which to submit a plan to cure deficiencies within 90 days.
 - Termination upon 15 days' notice is permitted upon a wholesaler's fraud in dealing with the brewer, sales outside its territory, or sales of goods known to be ineligible for sale.
 - Immediate termination is permitted upon a wholesaler's insolvency, loss of license for more than 60 days, or conviction of a felony.
- Termination by the brewer must be in good faith and for good cause.
 - Good cause is established by a wholesaler's failure to comply with reasonable and material contract terms.

24. **MINNESOTA** Minn. Stat. §§ 325B.01 to 325B.17.

- Exclusive territories.
- Termination requires 90 days' notice, during which time the wholesaler may cure deficiencies.
 - Termination upon 15 days' notice permitted upon the wholesaler's insolvency, loss of license, or violation of a significant law.
- Termination must be for good cause.
 - Good cause does not include a change in brewery ownership, but includes a wholesaler's loss of license, bankruptcy, or failure to substantially comply with reasonable and material terms of the franchise agreement.

25. **MISSISSIPPI** Miss. Code Ann. §§ 67-7-1 to 67-7-23.

- Written contract and exclusive territories required.
- Termination upon 30 days' notice, with the wholesaler given 30 days to submit a plan to cure deficiencies within 90 days.
 - Immediate termination is permitted for a variety of contingencies, including a wholesaler's fraudulent conduct towards the brewer, insolvency, loss of license, or failure to make payments according to established credit terms.
- Termination must be in good faith, for good cause.
 - Good cause exists when the wholesaler fails to comply with reasonable and material provisions of the agreement, the deficiency arose within the past two years, and the wholesaler failed to cure.

26. **MISSOURI** Mo. Rev. Stat. §§ 311.181 to 311.182; 407.400 to 407.420.

- Written agreement required.
- Exclusive territories presumed unless otherwise provided for by written agreement.
 - Community of Interest must exist for there to be a franchisor-franchisee relationship per *Missouri Beverage co., Inc. v. Shelton Bros., Inc.* 669 F3d 873 (2012). The court found no relationship because wholesaler's sales of importer's products never exceed 1.16% of wholesaler's annual sales, its name was not used in marketing, and it made no sizable investments particular to the importer.
- Termination upon 90 days' notice.
 - Immediate termination upon criminal misconduct, fraud, abandonment, insolvency, or issuing an NSF check.
- Termination requires good cause.

- Good cause includes failure to comply substantially with essential and reasonable terms of the parties' contract, bad faith, or wholesaler's loss of license for more than 31 days.

27. **MONTANA** Mont. Code Ann. §§ 16-3-217 to 16-3-226.

- Written contract, filed with the State.
- Agreement must include a list of mandatory terms, and designate exclusive territories.
- Termination upon 60 days' notice, with the wholesaler given a reasonable time to cure deficiencies.
 - Mandatory term in every contract includes a procedure for the regular review and correction of wholesaler deficiencies.
- Termination must be for just cause or in accordance with brewer's contract terms, as applied equally to all wholesalers within the State.

28. **NEBRASKA** Neb. Rev. Stat. §§ 53-201 to 53-223.

- Written agreement required.
- Exclusive territories, filed with the State.
- Termination upon 30 days' notice, with the wholesaler given a reasonable opportunity to cure deficiencies within 90 days.
 - Termination upon 15 days' notice permitted in certain circumstances, including a wholesaler's fraudulent conduct towards the brewer, sales outside its territory, failure to pay according to the agreement's terms and after written demand, and intentional cessation of brand business for more than 31 days.
 - Immediate termination permitted upon the wholesaler's insolvency, loss of license, conviction of a felony, or an agreement to terminate.
- Termination must be in good faith and for good cause.
 - Good cause includes a wholesaler's failure to comply with reasonable and material provisions of the contract.
 - Good faith means factual honesty and the "observance of reasonable commercial standards of fair dealing in the trade," as interpreted by the Uniform Commercial Code.
- Wholesaler is obligated to maintain clean taps, adhere to the brewer's freshness program, and comply with other reasonable written quality control standards.

29. **NEVADA** Nev. Rev. Stat. §§ 597.120 to 597.180.

- Exclusive territories presumed, but non-exclusive franchise permitted if specified in writing.
- Termination upon 90 days' notice, with 60 days to cure deficiencies.

- Termination upon written notice after wholesaler's loss of license for more than 31 days, insolvency, conviction of a felony, fraud toward the brewer, sale of beer to an unlicensed retailer, failure to pay according to agreement and seven days after demand for payment, attempt to transfer without notifying the brewer, or discontinuance of the brewer's brand.
- Termination must be for good cause.
 - Good cause means either the wholesaler's failure to substantially comply with essential and reasonable requirements of the agreement or the wholesaler's bad faith acts in carrying out the agreement.
 - Brewers selling less than 2,500 bbls. within the State in a calendar year are exempt from the good cause termination requirement.

30. **NEW HAMPSHIRE** N.H. Rev. Stat. Ann. §§ 180:1 to 180:12.

- Written agreement.
- Exclusive territories.
- Termination upon 90 days' notice, with wholesaler given a reasonable time to cure deficiencies.
 - Immediate termination permitted upon the wholesaler's insolvency, loss of license, conviction of a serious crime, willful breach of a material provision of the franchise agreement; attempt to transfer business without notice to the brewer, fraud, or failure to pay account upon demand.
- Termination only for good cause.
 - Good cause generally includes a wholesaler's loss of license, insolvency, or failure to substantially comply with the brewer's reasonable and material requirements.

31. **NEW JERSEY** N.J. Rev. Stat. §§ 33:1-93.12 to 33:1-93.20.

- Exclusive territories required unless dualing prior to March 1, 2006.
- Written agreements required.
- Termination upon written notice and 120 days to cure
 - Immediate termination upon insolvency, felony conviction, fraud, license loss for more than 31 days, intentional sales outside of the wholesaler's territory, or transfer of business without consent.
- Good cause required for termination.
 - Good cause means a wholesaler's failure to substantially comply with a reasonable term of the non-discriminatory franchise agreement.

32. **NEW MEXICO** N.M. Stat. §§ 60-8A-1; 60-8A-2; 60-8A-7 to 60-8A-11.

- Exclusive territories permitted, and must be filed with the State.
- Termination must be in good faith, for good cause.

- Good faith means factual honesty and observance of reasonable commercial standards under the circumstances.
- Good cause includes a wholesaler's failure to substantially comply with essential and reasonable contract provisions, or bad faith actions.
- Good cause does not include wholesaler consolidation.

33. **NEW YORK** N.Y. Alco. Bev. Cont. Law § 55-c.

- Written agreements required.
- Termination for cause upon written notice, with wholesaler given 15 days (or more by court order) to submit a plan to cure deficiencies within 75 days.
 - Time for corrective action may be limited by a wholesaler's prior failure to satisfactorily cure deficiencies, or if the brewer's product makes up less than either 1,000 cases or 1/2 of 1% of wholesaler's total purchases.
 - Wholesaler can demand that brewer supply it with a written plan for curing deficiencies.
 - Immediate termination permitted upon a wholesaler's insolvency, conviction of a felony, loss of license for more than 31 days, fraudulent conduct towards the brewer, failure to pay monies due under the agreement, acts constituting grounds for termination under the agreement, or under a written agreement to terminate.
- Upon 15 days' notice, a brewer may terminate a multiple brand wholesaler within 120 days of a competing brewer's loan to or acquisition of an interest in that wholesaler.
- Termination only for good cause.
 - Good cause includes the brewer's implementation of a national or regional consolidation policy (upon 90 days' notice) that is reasonable, nondiscriminatory, essential, and disclosed in writing, or the wholesaler's failure to comply with a material term of the franchise agreement.
 - Termination based upon consolidation requires payment of to wholesaler of "fair market value" of wholesaler's lost business.
- Small brewers (annual volume less than 300,000 barrels and sales to wholesaler 3% or less of wholesaler's annual business) may terminate an agreement without good cause upon payment of fair compensation to the wholesaler.

34. **NORTH CAROLINA** N.C. Gen. Stat. §§ 18B-1300 to 18B-1308.

- Exclusive territories, filed with the State.
- Termination upon 90 days' notice, with wholesaler given 45 days to cure.
 - Immediate termination permitted upon the wholesaler's insolvency, loss of license for more than 30 days, conviction of a serious felony, fraudulent

conduct in dealing with the brewer, failure to pay for delivered beer, or transfer of the business without notice to the brewer.

- Termination requires good cause.
 - Good cause means a wholesaler's failure to comply with contract terms that are reasonable, material, and not unconscionable or discriminatory.
 - Good cause does not include a change in either brewery ownership or the right to distribute the brand, sale or transfer of brand rights to a successor supplier, a wholesaler's failure to meet performance standards if imposed unilaterally by the supplier, a wholesaler's establishment of a franchise agreement with another supplier, or a supplier's desire to consolidate franchises.
 - Small brewery (fewer than 25,000 barrels) exception allows for termination absent good cause following the fifth business day after confirmed receipt of written notice and payment of fair market value.

35. **NORTH DAKOTA** N.D. Cent. Code §§ 5-04-1 to 5-04-18.

- Written contract with exclusive territories required.
- Termination upon 90 days' notice, with the wholesaler having 90 days to rectify deficiencies.
 - Immediate termination permitted upon the wholesaler's insolvency, loss of license, or significant violation of the law.
- Termination must be for good cause.
 - Good cause does not include a change in brand ownership, but does include the wholesaler's loss of license, insolvency, or failure to comply with reasonable and material obligations of the agreement.

36. **OHIO** Ohio Rev. Code Ann. §§ 1333.82 to 1333.87.

- Agreement must be in writing.
- Exclusive territories.
- Termination upon 60 days' notice.
 - Termination without notice permitted upon wholesaler's insolvency or loss of license for more than 30 days.
- Termination must be in good faith and for just cause.
 - Good faith requires fair and equitable business dealings.
 - Just cause cannot include the failure to perform an illegal act, the restructuring of a brewer's business, or the transfer of a brand.
- A wholesaler must act in good faith, properly represent the brewer, adequately serve the public, and protect the brewer's reputation and trade name.

37. **OKLAHOMA** Okla. Stat. tit. 37, §§ 163.2; 163.18A to 163.18H (for "low point beer").

- Franchise law applies to “low point beer” (not more than 3.2% ABW).
- Franchise protections do not apply to suppliers producing fewer than 300,000 gallons of low point beer per calendar year.
- Written agreement, designating exclusive territories.
- Good cause required for termination.
- Must provide written notice of termination and 60 days to cure defects.
 - Immediate termination upon written notice permitted if wholesaler engages in unapproved sales outside its designated territory, fails to pay upon written demand, insolvency, loss of license for more than 14 days, felony conviction, violation of a serious law, business transfer without approval, fraud, or ceases to do business for five business days.

38. **OREGON** Or. Rev. Stat. §§ 474.005 to 474.115.

- Agreement must be in writing and filed with the State.
- Exclusive territories required.
- Termination upon 90 days’ notice, with the wholesaler given 30 days to submit a plan that will correct any deficiency within 60 days.
 - Immediate termination upon written notice permitted upon the wholesaler’s insolvency, loss of license for more than 31 days, conviction of a felony, fraudulent conduct towards the brewer, substantial misrepresentations to the brewer, or for certain unapproved assignments of rights under the agreement.
- Termination requires good cause, with the brewer acting in good faith.
 - Good cause exists where the wholesaler fails to comply with a reasonable and material term of the agreement.

39. **PENNSYLVANIA** 47 Pa. Cons. Stat. §§ 4-431; 4-492; 40 Pa. Code § 9.96.

- Pennsylvania brewers are exempt from the franchise law’s provisions if they do not designate a distributor as a primary or original supplier and had not done so before 1980.
- Written agreement, filed with the State.
- Exclusive territories.
- Termination upon 90 days’ notice, with 90 days to cure any deficiencies. If a deficiency relates to inadequate equipment or warehousing, a wholesaler’s positive action to comply with the required change satisfies the cure provision.
 - Immediate termination permitted upon a wholesaler’s insolvency, fraudulent conduct towards the brewer, or loss of license for more than 30 days.
- Termination must be for good cause.

40. **RHODE ISLAND** R.I. Gen. Laws §§ 3-13-1 to 3-13-12.

- Licensed Rhode Island brewers are not considered suppliers within the meaning of the franchise law, and are exempt from its requirements.
- Written contract required.
- Exclusive territories.
- Termination upon 90 days' notice, with opportunity to cure within the time frame of the notice.
 - Immediate termination permitted in case of a wholesaler's insolvency, loss of license, or violation of a law significant to the business.
- Termination must be for good cause.
 - Good cause means the failure to substantially comply with a reasonable requirement of the agreement.

41. **SOUTH CAROLINA** S.C. Code Ann. §§ 61-4-1100 to 61-4-1320.

- Exclusive territories, in writing, filed with the State.
- Termination upon 60 days' notice.
- Termination *by either party* must be fair, and for just cause or provocation.

42. **SOUTH DAKOTA** S.D. Codified Laws §§ 35-8A-1 to 35-8A-20.

- Exclusive territories, in writing.
- Termination upon written notice that gives wholesaler at least 30 days in which to submit a plan to correct deficiencies within 90 days.
 - Termination by written notice is permitted upon numerous contingencies, including a wholesaler's loss of license for more than 31 days, insolvency, conviction of a felony, or fraudulent conduct towards the brewer.
- Termination must be for good cause, and in good faith.
 - Good faith imposes a duty on each party to act in a fair and equitable manner.
 - Good cause means a failure to substantially comply with terms that are reasonable, material, and are not unconscionable or discriminatory.

43. **TENNESSEE** Tenn. Code Ann. §§ 57-5-501 to 57-5-512; 57-6-104.

- Exclusive territories for each brand.
- Termination upon 90 days' notice, with the wholesaler having 30 days to submit a plan to correct deficiencies within 90 days.
 - Termination upon 30 days' notice permitted upon a brewer's discontinuance of the brand in the State (which cannot be reintroduced for one year) or wholesaler's conviction for a significant felony.

- Termination upon written notice is permitted upon a wholesaler's loss of license for more than 60 days, insolvency, fraud in dealing with the brewer, sales outside its designated territory, or failure to pay monies due under the agreement within five days of demand.
- Termination must be in good faith, for good cause.
 - Good cause exists where the wholesaler failed to substantially comply with essential and reasonable requirements of the agreement, so long as those terms are not discriminatory.

44. **TEXAS** Tex. Alco. Bev. Code Ann. §§ 102.51; 102.71 to 102.82.

- Written contract required.
- Exclusive territories, filed with the State.
- Termination upon 90 days' notice, with the wholesaler having 90 days to cure any deficiencies.
 - Immediate termination permitted upon a wholesaler's insolvency, conviction of a serious crime, loss of a license for 30 days or more, or failure to pay money when due, after demand.
- Termination only for good cause.
 - Good cause means a failure to substantially comply with an essential, reasonable, and commercially acceptable term of the agreement.

45. **UTAH** Utah Code Ann. §§ 32B-1-102; 32B-11-201; 32B-11-503; 32B-14-101 through 32B-14-402.

- Small brewers (manufacturers producing less than 6,000 barrels per year) exempted from franchise law.
- Exclusive territories, filed with the State.
- Written agreement required.
- Termination upon 90 days' notice, with wholesaler given the opportunity to cure within 90-day period.
 - Immediate termination permitted for wholesaler's insolvency, conviction or a felony, loss of license for more than 30 days, or fraudulent conduct.
- Good cause required for either brewer *or wholesaler* to terminate contract.
 - Good cause means the material failure to comply with terms that are essential, reasonable and lawful.

46. **VERMONT** Vt. Stat. Ann. tit. 7, §§ 701 to 710.

- Exclusive territories.
- Termination upon 120 days' notice, with the wholesaler given 120 days to rectify any deficiency.

- Immediate termination permitted upon a wholesaler's insolvency, or when the brewer shows that providing 120 days' notice would cause irreparable harm to the marketing of the brand.
- Termination must be for good cause.

47. **VIRGINIA** Va. Code Ann. §§ 4.1-500 to 4.1-517.

- Exclusive territories (except where overlaps are caused by changes in brewer ownership), in writing and filed with the State.
- Termination upon 90 days' notice and notice to the State, with a wholesaler given 60 days to provide the brewer with a plan for corrective action.
 - Immediate termination permitted in the case of a wholesaler's insolvency or loss of license.
- Termination requires good cause.
 - Good cause is determined by the Virginia Department of Alcohol Beverage Control.
 - Good cause includes a wholesaler's loss of license, insolvency, or failure to substantially comply with reasonable and material requirements. Presumptively legitimate requirements include maintaining a brand's sales volume, providing services at a level comparable to that provided by other Virginia wholesalers, and requiring a brewer's reasonable consent to a transfer of the wholesaler's business.
- Obligation of good faith is implied in every contract.

48. **WASHINGTON** Wash. Rev. Code §§ 19.126.010 to 19.126.901.

- Franchise laws do not cover certain domestic suppliers producing fewer than 200,000 barrels of beer annually.
- Written contract required.
- Termination upon 60 days' notice, giving the wholesaler 60 days to cure any deficiency.
 - Immediate termination upon a wholesaler's insolvency, loss of license for more than 14 days, or fraud.
- *Wholesaler* required to give a brewery 90 days' notice before termination.

49. **WEST VIRGINIA** W. Va. Code § 11-16-21.

- Written agreement, filed with the State.
- Exclusive territories.
 - West Virginia must approve all new territorial appointments.
 - Distributor must be allowed to distribute new brands.
- Termination upon 90 days' notice.

- Termination must be for just cause.

50. **WISCONSIN** Wis. Stat. §§ 125.33 to 125.34; 135.01 to 135.07.

- Parties must share a “community of interest” before “dealership” law applies.
- Although the “dealership” provisions may not apply, Wisconsin law specifies the compensation due upon certain wholesaler terminations.
- Written agreement required.
- Exclusive territories required.
- Termination upon 90 days’ notice, with wholesaler given 60 days to rectify any deficiencies.
 - Termination upon 10 days’ notice permitted where wholesaler is in default on payments under the agreement.
 - Immediate termination is permitted upon the wholesaler’s insolvency.
- Termination requires good cause.
 - Good cause includes the wholesaler’s failure to substantially comply with essential and reasonable requirements of the agreement which are not discriminatory, or the wholesaler’s bad faith acts.

51. **WYOMING** Wyo. Stat. Ann. §§ 12-9-101 to 12-9-119.

- Exclusive territorial agreements, filed with the State.
- Termination upon 30 days’ notice, during which time the wholesaler can cure with a plan to remedy deficiencies within 90 days.
 - Immediate termination permitted upon a wholesaler’s insolvency, loss of license for 60 days or more, conviction of a felony, intentional sales outside the territory, or fraud.
- Termination must be in good faith, and for good cause.
 - Good cause means wholesaler’s insolvency, loss of license for more than 60 days, conviction of a felony, intentional sales outside its territory, or failure to comply with a reasonable and material provision of the franchise agreement.
 - Good faith requires honesty in fact and observance of reasonable commercial standards in the trade.

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