

NORTH CAROLINA BEER DISTRIBUTION AGREEMENTS

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North Carolina Craft Brewers Guild
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THE CHOICE: BREWERY SELF DISTRIBUTION OR WHOLESALER DISTRIBUTION

> The Limited Right to Self Distribution

The holder of a brewery permit may:

Obtain a malt beverage wholesaler permit to sell, deliver, and ship at wholesale only malt beverages manufactured by the brewery. The authorization of this subdivision applies to a brewery that sells, to consumers at the brewery, to wholesalers, to retailers, and to exporters, fewer than 25,000 barrels, as defined in G.S. 81A-9, of malt beverages produced by it per year. A brewery not exceeding the sales quantity limitations in this subdivision may also sell the malt beverages manufactured by the brewery at not more than **three other locations in the State**, where the sale is legal, upon obtaining the appropriate permits under G.S. 18B-1001. A brewery operating any additional retail location pursuant to this subdivision shall also offer for sale at that location a reasonable selection of competitive malt beverage products.

N.C. Gen. Stat. § 18B-1104(8)

THE CHOICE: BREWERY SELF DISTRIBUTION OR WHOLESALER DISTRIBUTION

> Three-Tier System in a Control State

- Tied House Prohibition
- Exceptions and Exemptions to Tied House Prohibition

THE BEER FRANCHISE LAW

> Overview

> Beer Franchise Law is there whether you have an agreement or not

GOALS OF DISTRIBUTION AGREEMENT

- > Make Money – All BOATS RISE!
- > Have lawful distribution

CHECKLIST FOR AGREEMENT

> What the Beer Franchise Law Writes into the Relationship:

- Good cause for termination in most cases

Good cause for altering or terminating a franchise agreement, or failing to renew or causing a wholesaler to resign from such an agreement, exists when the wholesaler fails to comply with provisions of the agreement which are reasonable, material, not unconscionable, and which are not discriminatory when compared with the provisions imposed, by their terms or in the manner of enforcement, on other similarly situated wholesaler by the supplier.

N.C. Gen. Stat. § 18B-1305(a)

CHECKLIST FOR AGREEMENT

> But, the Small Brewery Exception:

N.C. Gen. Stat. § 18B-1305(a1)

Termination by a Small Brewery. – A brewery’s authorization to distribute its own malt beverage products pursuant to G.S. 18B-1104(8) shall revert back to the brewery, in the absence of good cause, following the fifth business day after confirmed receipt of written notice of such reversion by the brewery to the wholesaler. The brewery shall pay the wholesaler fair market value for the distribution rights for the affected brand. For purposes of this subsection, “fair market value” means the highest dollar amount at which a seller would be willing to sell and a buyer willing to buy at the time the self-distribution rights revert back to the brewery, after each party has been provided all information relevant to the transaction.

N.C. Gen. Stat. § 18B-1305(d)

- Approval of transfer of business
 - Automatic termination

CHECKLIST FOR AGREEMENT

> Other Terms

- Territory
- Standards of performance
 - Sales goals
 - On/off premise retail accounts
- Termination – Subject to N.C. Gen. Stat. § 18B-1305
- Business Plans
- Storage (refrigeration)
- Inventory
- Promotional budget
- Training/experience

CHECKLIST FOR AGREEMENT

> Safety in a template for uniform treatment

- It is unlawful for a supplier, or an officer, agent or representative of a supplier, to:

Discriminate in price, allowance, rebate, refund, payment term, commission, discount, or service between wholesalers licensed in North Carolina. As used in this subsection, "discriminate" means the granting of a more favorable price, allowance, rebate, refund, payment term, commission, discount, or service to one North Carolina wholesaler than to another North Carolina wholesaler based on the quantity of malt beverages purchased or for any other reason, but "discriminate" shall exclude the granting of more favorable freight and transportation costs, price promotions on malt beverage products for special events in a particular market not to exceed 14 consecutive days, point-of-sale advertising materials, sponsorships, consumer specialty items, consumer sweepstakes, and novelties. A supplier may, however, offer a lower price or discount in order to match that of a competing supplier on a similar category of malt beverage products in the entire State or in a particular market.

N.C. Gen. Stat. § 18B-1304(10)

QUESTIONS?

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