CHAPTER 325B

BEER BREWERS AND WHOLESALERS

325B.01	DEFINITIONS.	325B.09	PRICE OF PRODUCT.
325B.02	NO INDUCEMENT OR COERCION.	325B.10	RETALIATORY ACTION PROHIBITED.
325B.03	NO DUAL DISTRIBUTION.	325B.11	MANAGEMENT.
325B.031	BRANDS; BRAND EXTENSIONS.	325B.12	PROHIBITED ACTS.
325B.04	TERMINATION OF AGREEMENTS.	325B.13	NO WAIVER.
325B.05	NOTICE OF INTENT TO TERMINATE.	325B.14	OBLIGATIONS OF SUCCESSOR.
325B.06	ASSIGNMENT, TRANSFER OR SALE OF BUSINESS.	325B.15	COVERAGE.
325B.07	REASONABLE COMPENSATION.	325B.16	RIGHT OF FREE ASSOCIATION.
325B.08	JUDICIAL REMEDIES.	325B.17	RELATION TO PRIOR LAW.

325B.01 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 325B.01 to 325B.17 and unless otherwise required by the context, the terms defined in this section have the meanings given them.

Subd. 2. **Agreement.** "Agreement" means one or more of the following:

(a) a commercial relationship between a beer wholesaler and a brewer of a definite or indefinite duration, which is not required to be evidenced in writing;

(b) a relationship whereby the beer wholesaler is granted the right to offer and sell a brand or brands of beer offered by a brewer;

(c) a relationship whereby the beer wholesaler, as an independent business, constitutes a component of a brewer's distribution system;

(d) a relationship whereby the beer wholesaler's business is substantially associated with a brewer's brand or brands, designating the brewer;

(e) a relationship whereby the beer wholesaler's business is substantially reliant on a brewer for the continued supply of beer;

(f) a written or oral arrangement for a definite or indefinite period whereby a brewer grants to a beer wholesaler a license to use a brand, trade name, trademark, or service mark, and in which there is a community of interest in the marketing of goods or services at wholesale or retail.

Subd. 3. **Beer wholesaler.** "Beer wholesaler" shall mean any person importing or causing to be imported into this state or purchasing or causing to be purchased within this state, any beer for sale or resale to retailers or wholesalers, without regard to whether the business of the person is conducted under the terms of an agreement with a brewer.

Subd. 4. **Brewer.** "Brewer" means every brewer or importer of beer located within or without the state of Minnesota, who enters into an "agreement" with any beer wholesaler doing business in the state of Minnesota.

Subd. 5. **Person.** "Person" means a natural person, corporation, partnership, trust, agency, or other entity as well as the individual officers, directors or other persons in active control of the activities of each such entity. Person also includes heirs, assigns, personal representatives and guardians.

Subd. 6. **Successor.** "Successor" means a person who replaces a brewer, importer, or wholesaler with regard to the right to manufacture, sell, distribute, or import a brand or brands of beer.

Subd. 7. **Territory.** "Territory" or "sales territory" means the area of primary sales responsibility designated by any agreement between any beer wholesaler and brewer for the brand or brands of any brewer.

History: *1977 c 328 s 1; 1988 c 449 s 1; 1998 c 364 s 1*

325B.02 NO INDUCEMENT OR COERCION.

No brewer shall:

(1) Induce or coerce, or attempt to induce or coerce, any beer wholesaler to accept delivery of any alcoholic beverage or any other commodity which shall not have been ordered by the beer wholesaler.

(2) Induce or coerce, or attempt to induce or coerce, any beer wholesaler to do any illegal act or thing by threatening to amend, cancel, terminate, or refuse to renew any agreement existing between a brewer and a beer wholesaler.

(3) Require a wholesaler to assent to any condition, stipulation or provision limiting the wholesaler's right to sell the product of any other brewer anywhere in the state of Minnesota, provided that the acquisition of the product of another brewer does not materially impair the quality of service or quantity of sales of the existing brand or brands of the brewer seeking to impose the condition, stipulation or provision.

(4) Refuse to supply, in reasonable quantities and within a reasonable time after receipt of the wholesaler's order, beer ordered by a wholesaler who has an agreement with the brewer for sale and distribution of the brewer's beer, unless the refusal to supply is due to:

(i) the brewer's prudent and reasonable restrictions on extension of credit to the wholesaler;

(ii) weather or other natural events;

(iii) a work stoppage or delay resulting from a strike or other labor dispute;

(iv) a bona fide shortage of materials;

(v) a freight embargo; or

(vi) any other cause over which the brewer or the brewer's agents have no control.

History: *1977 c 328 s 2; 1986 c 444; 1994 c 611 s 1*

325B.03 NO DUAL DISTRIBUTION.

No brewer who designates a sales territory for which any wholesaler shall be primarily responsible shall enter into any agreement with any other beer wholesaler for the purpose of establishing an additional agreement for its brand or brands of beer in the same territory served by a beer wholesaler with that particular brand.

History: *1977 c 328 s 3*

325B.031 BRANDS; BRAND EXTENSIONS.

Subdivision 1. **Definitions.** For purposes of this section:

(a) "Brand" is any word, name, group of letters, symbol, or combination thereof, that is adopted and used by a brewer or importer to identify a specific beer product, and to distinguish that beer product from another beer product.

(b) "Brand extension" is any brand that (1) incorporates all or a substantial part of the unique features of a preexisting brand of the same brewer or importer, and (2) which relies to a significant extent on the goodwill associated with that preexisting brand.

Subd. 2. **Brand extension to be assigned.** A brewer or importer who assigns a brand extension to a wholesaler must assign the brand extension to the wholesaler to whom the brewer or importer granted the exclusive sales territory to the brand from which the brand extension resulted. This requirement does not apply to assignments of brand extensions to wholesalers that were made by a brewer or importer before May 6, 1994.

Subd. 3. **Additional brand extension.** In the event that prior to May 6, 1994, a brewer or importer had assigned a brand extension to a wholesaler who was not the appointed wholesaler for the brand from which the brand extension was made, then any additional brand extension must be assigned to the wholesaler who first had the brand.

History: *1994 c 611 s 2*

325B.04 TERMINATION OF AGREEMENTS.

Subdivision 1. **Terminations.** Notwithstanding the terms, provisions or conditions of any agreement, no brewer shall amend, cancel, terminate or refuse to continue to renew any agreement, or cause a wholesaler to resign from an agreement, unless the brewer:

(1) has satisfied the notice and opportunity to cure requirements of section 325B.05;

(2) has acted in good faith; and

(3) has good cause for the cancellation, termination, nonrenewal, discontinuance, or forced resignation.

Subd. 2. **Good cause.** For purposes of subdivision 1:

(a) "Good cause" includes, but is not limited to, the following:

(1) revocation of the wholesaler's license under section 340A.304;

(2) the wholesaler's bankruptcy or insolvency;

(3) assignment of the assets of the wholesaler for the benefit of creditors, or a similar disposition of the wholesaler's assets; or

(4) a failure by the wholesaler to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed on the wholesaler by the brewer, where the failure was discovered by the brewer not more than one year before the date on which the brewer gave notice to the wholesaler under section 325B.05.

(b) "Good cause" does not include the sale or purchase of a brewer.

History: *1977 c 328 s 4; 1986 c 444; 1994 c 611 s 3*

325B.05 NOTICE OF INTENT TO TERMINATE.

Subdivision 1. **Notices; time limit.** (a) Notwithstanding any provision to the contrary in any agreement between a brewer and a wholesaler, a brewer who intends to terminate, cancel, discontinue, or refuse to renew an agreement with a wholesaler must furnish written notice to that effect to the wholesaler not less than 90 days before the effective date of the intended action and must provide the wholesaler with a bona fide opportunity to substantially cure any claimed deficiency within the 90 days.

(b) The notice must be sent by certified mail and must contain, at a minimum, (1) the effective date of the intended action, and (2) a statement of the nature of the intended action and the brewer's reasons therefor.

(c) In no event may a termination, cancellation, discontinuance, or nonrenewal be effective until at least 90 days from the wholesaler's receipt of written notice under this section, unless the wholesaler has consented in writing to a shorter period.

Subd. 2. **Notices; other provisions.** Notwithstanding subdivision 1 or section 325B.04, a brewer may terminate or refuse to renew an agreement on not less than 15 days' written notice to the wholesaler, upon any of the following occurrences:

(1) the bankruptcy or insolvency of the wholesaler;

(2) an assignment of the wholesaler's assets for the benefit of creditors, or a similar disposition of those assets;

(3) revocation of the wholesaler's license under section 340A.304; or

(4) conviction or a plea of guilty or no contest to a charge of violating any state or federal law, where the violation materially affects the wholesaler's right to remain in business. A notice under this subdivision must meet the requirements of subdivision 1, paragraph (b).

History: *1977 c 328 s 5; 1994 c 611 s 4*

325B.06 ASSIGNMENT, TRANSFER OR SALE OF BUSINESS.

No brewer shall unreasonably withhold consent to any assignment, transfer or sale of the wholesaler's business whenever the wholesaler to be substituted meets the material and reasonable qualifications and standards required of its wholesalers.

History: *1977 c 328 s 6*

325B.07 REASONABLE COMPENSATION.

Subdivision 1. **Requirement.** Any brewer which amends, cancels, terminates, or refuses to continue or renew any beer agreement, or causes a wholesaler to resign, unless for good cause shown as defined in section 325B.04, from an agreement or unreasonably withholds consent to any assignment, transfer or sale of a wholesaler's business, shall pay the wholesaler reasonable compensation for the value of the wholesaler's business with relationship to the terminated brand or brands. The value of the wholesaler's business shall include, but not be limited to, its good will, if any.

Subd. 2. **Arbitration.** In the event that the brewer and the beer wholesaler are unable to mutually agree on the reasonable compensation to be paid for the value of the wholesaler's business, as defined herein, the matter shall be submitted to a neutral arbitrator to be selected by the parties, or if they cannot agree, by the

chief judge of the district court. All of the costs of the arbitration shall be paid one-half by the wholesaler and one-half by the brewer. The award of the neutral arbitrator shall be final and binding on the parties.

History: *1977 c 328 s 7*

325B.08 JUDICIAL REMEDIES.

If a brewer engages in conduct prohibited under sections 325B.01 to 325B.17, a wholesaler may maintain a suit against the brewer in federal or state court in Minnesota. Such a venue may not be waived except at the time that the lawsuit is filed. The court may grant equitable relief as is necessary to remedy the effects of conduct which it finds to exist and which is prohibited under sections 325B.01 to 325B.17, including, but not limited to, declaratory judgment and injunctive relief. The court may, if it finds that the brewer has acted in bad faith in invoking the amendment, termination, cancellation or nonrenewal provisions of sections 325B.01 to 325B.17, or has unreasonably withheld its consent to any assignment, transfer or sale of the wholesaler's agreement, award punitive damages, as well as actual damages, costs and attorneys fees.

History: *1977 c 328 s 8; 2000 c 415 s 1*

325B.09 PRICE OF PRODUCT.

No brewer, whether by means of a term or condition of an agreement or otherwise, shall fix or maintain the price at which the wholesaler shall sell any alcoholic beverage.

History: *1977 c 328 s 9*

325B.10 RETALIATORY ACTION PROHIBITED.

A brewer shall not take retaliatory action against a wholesaler who files or manifests an intention to file a complaint of alleged violation of state or federal law or regulation by the brewer with the appropriate state or federal regulatory authority. Retaliatory action shall include, but shall not be limited to, refusal without good cause to continue the agreement, or a material reduction in the quality of service or quantity of products available to the wholesaler under the agreement.

History: *1977 c 328 s 10*

325B.11 MANAGEMENT.

No brewer shall require or prohibit any change in management or personnel of any wholesaler unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the brewer.

History: *1977 c 328 s 11*

325B.12 PROHIBITED ACTS.

Subdivision 1. **Discrimination prohibited.** No brewer shall discriminate among its wholesalers in any business dealings including, but not limited to, the price of beer sold to the wholesaler, unless the classification among its wholesalers is based upon reasonable grounds. Nothing in this section shall be construed to prohibit the sale or offer of sale of beer at a volume discount.

Subd. 2. **Sales; rebates.** No brewer may:

(1) sell or offer to sell any beer to any Minnesota wholesaler at a price lower than the actual price offered to any other Minnesota wholesaler for the same product;

(2) utilize any method, including but not limited to, a sales promotion plan or program:

(i) that constitutes or results in a different offer being made to wholesalers for the same product;

(ii) that relates in any way to the price being charged or to be charged by a wholesaler to a retailer, including without limitation, any arrangement whereby the wholesale price is connected with any reduction from or addition to the wholesaler's normal price to retail; or

(iii) that results in a fixed retail price predetermined by a brewer; or

(3) utilize any rebate plan or program in connection with the sale of beer to a Minnesota wholesaler, unless:

(i) the brewer pays rebates to a wholesaler, pursuant to a rebate plan or program, within ten days after the wholesaler provides the brewer with appropriate documentation as reasonably required by the brewer;

(ii) the rebate plan or program guarantees that the brewer will make a rebate payment no later than 45 days after the initiation of a rebate plan or program, provided that a wholesaler timely submits appropriate documentation as reasonably required by a brewer; and

(iii) in the event of an audit, other examination, or claim by a brewer regarding the propriety of rebate payments made to a wholesaler, a brewer shall only be permitted to examine a wholesaler's records going back one year from the date of the audit, other examination, or claim and shall only be permitted to seek reimbursement for rebate payments made to the wholesaler during the one-year period.

History: *1977 c 328 s 12; 1994 c 611 s 5*

325B.13 NO WAIVER.

No brewer shall require any wholesaler to waive compliance with any provision of sections 325B.01 to 325B.17. Nothing in sections 325B.01 to 325B.17 shall be construed to limit or prohibit good faith settlements of disputes voluntarily entered into between the parties.

History: *1977 c 328 s 13*

325B.14 OBLIGATIONS OF SUCCESSOR.

A successor shall become obligated to all of the terms and conditions of the agreement in effect on the date of succession. This section applies regardless of the character or form of the succession. A successor has the right to contractually require its wholesalers to comply with operational standards of performance, if the standards are uniformly established for all of the successor's wholesalers and conform to sections 325B.01 to 325B.17.

History: *1977 c 328 s 14; 1986 c 444; 1998 c 364 s 2*

325B.15 COVERAGE.

The provisions of sections 325B.01 to 325B.17 cover agreements entered into after May 28, 1977.

History: *1977 c 328 s 15; 1987 c 346 s 2*

325B.16 RIGHT OF FREE ASSOCIATION.

No brewer or wholesaler shall restrict or inhibit, directly or indirectly, the right of free association among brewers or wholesalers for any lawful purpose.

History: *1977 c 328 s 16*

325B.17 RELATION TO PRIOR LAW.

Sections 325B.01 to 325B.17 supplement and do not supersede any prior law. If they are found to be inconsistent with prior law, the prior law shall govern.

History: *1977 c 328 s 17*