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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 9. ALCOHOLIC BEVERAGES [23000 - 25762] (*Division 9 added by Stats. 1953, Ch. 152.*)

CHAPTER 12. Beer Price Posting and Marketing Regulations [25000 - 25010] (*Chapter 12 added by Stats. 1953, Ch. 152.*)

25000. (a) Each manufacturer, importer, and wholesaler of beer shall file and thereafter maintain on file with the department, in such form as the department may provide, a written schedule of selling prices charged by the licensee for beer sold and distributed by the licensee to customers in California, except that the transfer, including the sale, of beer between wholesalers who sell the same brand in package is permitted without filing the schedule of selling prices, and the transfer, including the sale, of beer made under contract from a contract beer manufacturer making the beer to a beer manufacturer receiving the beer is permitted without filing the schedule of selling prices. All prices filed shall be for immediate delivery. Each manufacturer, importer, and wholesaler of beer shall file a price schedule for each county in which his or her customers have their premises, whether the price that is posted is f.o.b. or delivered, or both. Different prices for different trading areas within a county shall be based upon natural geographical differences justifying the different prices, and shall not be established for special customers. This section shall not affect or alter any provisions of law concerning quantity discounts on beer.

(b) For purposes of this section, a "contract beer manufacturer" is a beer manufacturer that does all of the following:

- (1) Makes beer pursuant to a written contract with another beer manufacturer, and neither entity has a controlling interest in the other entity.
- (2) Makes beer in accordance with a recipe that is a trade secret of the beer manufacturer having its beer made under contract.
- (3) Has no right to sell the beer to any other beer manufacturer, importer, or wholesaler other than the beer manufacturer who contracted for the beer.

(c) For purposes of this section, "beer manufacturer" includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

(*Amended by Stats. 2001, Ch. 567, Sec. 3. Effective October 7, 2001.*)

25000.2. (a) For purposes of this section:

- (1) "Acquire" means to purchase, receive, assume, obtain, or otherwise come into possession or control of.
- (2) "Affected distribution rights" means the distribution rights to the product held by the existing beer wholesaler prior to the acquisition of the right to manufacture, import, or distribute the product by the successor beer manufacturer.
- (3) "Beer manufacturer" includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.
- (4) "Cancel" means to terminate, reduce, not renew, not appoint or reappoint, or cause any of the same.
- (5) "Existing beer wholesaler" means a beer wholesaler that distributes a product at the time a successor beer manufacturer acquires the rights to manufacture, import, or distribute that product.
- (6) "Fair market value" includes all elements of value, including, but not limited to, goodwill.
- (7) "Product" means a brand or brands of beer, as defined by Section 23006.

(8) "Successor beer manufacturer" means a beer manufacturer that acquires the rights to manufacture, import, or distribute a product.

(9) "Successor beer manufacturer's designee" means one or more distributors designated by the successor beer manufacturer to replace the existing beer wholesaler, for all or part of the existing beer wholesaler's territory, in the distribution of the product.

(b) (1) Any successor beer manufacturer that acquires the rights to manufacture, import, or distribute a product, and who cancels any of the existing beer wholesaler's rights to distribute the product, shall comply with this section.

(2) A successor beer manufacturer's designee shall comply with this section.

(c) (1) The successor beer manufacturer shall notify the existing beer wholesaler of the successor beer manufacturer's intent to cancel any of the existing beer wholesaler's rights to distribute the product.

(2) The successor beer manufacturer shall mail the notice by certified mail, return receipt requested, to the existing beer wholesaler. The successor beer manufacturer shall include in the notice the name, address, and telephone number of the successor beer manufacturer's designee or designees.

(d) The successor beer manufacturer's designee shall negotiate with the existing beer wholesaler to determine the fair market value of the affected distribution rights and, if the existing beer wholesaler and the successor beer manufacturer's designee agree to the fair market value of the affected distribution rights, shall compensate the existing beer wholesaler in the agreed amount. The successor beer manufacturer's designee and the existing beer wholesaler shall negotiate in good faith.

(e) The existing beer wholesaler shall continue to distribute the product to at least the same extent that it distributed the product immediately before the successor beer manufacturer acquired rights to the product until receipt of the payment of the compensation agreed to under subdivision (d) is made or is awarded under subdivision (f). The successor beer manufacturer and the existing beer wholesaler shall act in good faith regarding the ongoing supply and distribution of the product.

(f) If the successor beer manufacturer's designee and the existing beer wholesaler are unable to mutually agree on the fair market value of the affected distribution rights within 30 days of the existing beer wholesaler's receipt of the successor beer manufacturer's notice pursuant to subdivision (c), the successor beer manufacturer's designee or the existing beer wholesaler shall initiate arbitration against each other to determine the issue of compensation for the fair market value of the affected distribution rights no later than 40 days after the existing beer wholesaler's receipt of the successor beer manufacturer's notice pursuant to subdivision (c). Upon submission to arbitration, the arbitration shall be the means of determining compensation to the existing beer wholesaler for the fair market value of the affected distribution rights, and the fair market value of the affected distribution rights shall be the purpose of the arbitration unless the parties agree otherwise.

(1) An arbitration held under this subdivision shall be held in California through a private arbitration services provider with at least three offices in California and a statewide roster of at least 70 neutral arbitrators, of which at least 30 have prior experience as a sole arbitrator in franchise, distribution, or related business litigation.

(2) The direct costs of the arbitration, including any fees charged by the arbitrator, shall be borne equally by the parties engaged in the arbitration. All other costs shall be paid by the party incurring them.

(3) The parties shall mutually agree on an arbitrator. If the parties cannot agree on the arbitrator, the arbitration provider shall select an impartial arbitrator.

(4) (A) No later than 20 days after receipt of a notification to arbitrate, the parties shall complete an initial exchange of all nonprivileged documents and other information relevant to the fair market value of the affected distribution rights in their possession and control, including, without limitation, copies of all documents and the names of individuals who may be called to testify at the arbitration hearing. No later than 45 days after receipt of notification to arbitrate, the parties shall complete an exchange of the names of any experts who may be called to testify at the arbitration hearing, together with each expert's report that may be introduced at the arbitration hearing.

(B) The arbitrator may modify the requirements of subparagraph (A) on a showing of good cause. The arbitrator shall permit third-party discovery and additional discovery between beer wholesalers, including depositions, which the arbitrator finds appropriate for a period of time not to exceed 90 days after receipt of a notification to arbitrate. No discovery shall be permitted against a beer manufacturer.

(5) The decision of the arbitrator shall be final and binding on the parties unless notice of appeal is filed, within 10 business days after service of the arbitration award, with the superior court of the county in which the hearing was held. Upon filing of the appeal, the court shall review the arbitration award for errors of fact or law by determining whether the award is supported by the sufficiency of the evidence presented at the arbitration. This subdivision shall further permit any other appeal or review that is authorized by the California Arbitration Act (Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure).

(6) The arbitrator's award shall be monetary only and shall not enjoin or compel conduct.

(7) The arbitration hearing shall conclude not more than 180 days after receipt of a notification to arbitrate, unless the time period is extended by mutual agreement of the parties or by the arbitrator.

(8) The arbitrator shall render a decision not later than 15 days after the conclusion of the arbitration unless this time period is extended by mutual agreement of the parties or by the arbitrator.

(9) A party who fails to participate in the arbitration hearings waives all rights the party would have had in the arbitration and is considered to have consented to the determination of the arbitrator.

(10) The Legislature finds and declares that several unique factors in combination warrant the Legislature authorizing limited mandatory arbitration between an existing beer wholesaler and a successor beer manufacturer's designee solely to determine the issue of compensation for the fair market value of the affected distribution rights:

(A) On the issue of the fair market value of the affected distribution rights, the parties are sophisticated and in an equal position in their knowledge of this legal issue and understand the law and their legal rights, including their jury trial rights.

(B) The parties desire a mandatory arbitration provision to resolve the question of compensation for the fair market value of the affected distribution rights if the parties are not able to reach a mutual settlement so that product distribution can be continued in an orderly manner and the determination of compensation can be made in a timely manner.

(C) The state's regulatory interest in maintaining orderly markets for the safe and efficient transportation, distribution, and sale of beer within the state warrants the statutory authorization for mandatory arbitration as provided in this section.

(g) If the existing beer wholesaler does not receive payment of the compensation under subdivision (d) or (f) not later than 10 business days after the date of the settlement or service of the arbitration award, and if there is no appeal or review filed under paragraph (5) of subdivision (f), the existing beer wholesaler shall remain the distributor of the product in the existing beer wholesaler's territory to at least the same extent that the existing beer wholesaler distributed the product immediately before the successor beer manufacturer acquired rights to the product, and the existing beer wholesaler is not entitled to the settlement or arbitration award.

(h) Nothing in this section shall be construed to limit or prohibit good faith settlements voluntarily entered into by the parties subsequent to the successor beer manufacturer's notice pursuant to subdivision (c).

(Added by Stats. 2007, Ch. 350, Sec. 1. Effective January 1, 2008.)

25000.5. (a) Every beer manufacturer, whether located within or without the state, who sells and distributes beer in this state shall designate territorial limits in the state within which the brands of beer manufactured by him may be sold by wholesalers of beer to customers.

(b) A wholesaler of beer shall not sell any brand of beer unless the following conditions are met:

(1) The wholesaler has first entered into a written agreement, with the manufacturer of that brand, which sets forth the territorial limits within which the brand shall be distributed by the wholesaler.

(2) A copy of the agreement, and any amendments thereto, has been filed with the department.

(Amended by Stats. 1984, Ch. 348, Sec. 1.)

25000.6. (a) A provision in an agreement between a beer manufacturer and a beer wholesaler for the sale and distribution of beer in this state, which restricts venue to a forum outside this state, is void with respect to any claim arising under or relating to the agreement involving a beer wholesaler operating within this state.

(b) This section shall apply to any transaction or conduct pursuant to an agreement described in subdivision (a) on or after the effective date of this section.

(c) For purposes of the section, "beer manufacturer" includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

(Amended by Stats. 2001, Ch. 567, Sec. 4. Effective October 7, 2001.)

25000.7. (a) Notwithstanding the provisions of any agreement for the sale or distribution of beer between a beer manufacturer and beer wholesaler, no sale or distribution agreement shall be terminated solely for a beer wholesaler's failure to meet a sales goal or quota that is not commercially reasonable under the prevailing market conditions.

(b) For purposes of this section, "beer manufacturer" includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

(Added by Stats. 2000, Ch. 1083, Sec. 1. Effective January 1, 2001.)

25000.9. (a) Any beer manufacturer who unreasonably withholds consent or unreasonably denies approval of a sale, transfer, or assignment of any ownership interest in a beer wholesaler's business with respect to that manufacturer's brand or brands, shall be liable in damages to the beer wholesaler. Recoverable damages under this section shall not exceed the compensatory damages sustained by the wholesaler and the wholesaler's costs of suit. The fair market value of the beer wholesaler's business shall include, but is not limited to, its goodwill, if any.

(b) If a beer wholesaler has been paid a consideration by a successor wholesaler for the sale, transfer, or assignment of the beer wholesaler's interest in the sale or distribution of the affected brand or brands, the beer manufacturer shall be liable only for compensatory damages in an amount reflecting the difference in the amount already paid to the beer wholesaler, and the fair market value of the beer wholesaler's business with respect to the affected brand or brands.

(c) For purposes of this section, "beer manufacturer" includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

(Added by Stats. 2000, Ch. 1083, Sec. 2. Effective January 1, 2001.)

25001. The schedule of prices filed may be changed or modified from time to time by the licensee filing it by filing with the department either a new and complete schedule of prices or an amendment thereto of changed or modified prices, as the department may by rule require.

(Amended by Stats. 1955, Ch. 447.)

25002. The first schedule of prices filed by a licensee shall be effective immediately upon filing, but an amendatory schedule or amendments to a prior filed schedule is not effective until ten (10) days after the filing date thereof, except that if any licensee has filed a new schedule or amendments to a prior filed schedule to meet lower posted and filed competing prices in a trade area, and the prices thus posted are not lower than the competing prices sought to be met, the new schedule or amendments shall go into effect immediately if the competing prices are already effective, or at the same time as the competing prices become effective.

(Added by Stats. 1953, Ch. 152.)

25003. Filed price schedules are subject to public inspection only after they take effect. Each filing licensee shall retain in the licensed premises a copy of his or her effective posted and filed schedule.

(Amended by Stats. 1991, Ch. 161, Sec. 1.)

25004. Upon the filing of an original schedule of prices and after the effective date of any schedule of amendatory prices, all prices therein stated shall be strictly adhered to by the filing licensee, and any departure or variance therefrom by a licensee is a misdemeanor, except that the transfer of beer between wholesalers who sell the same brand in package is permitted without filing the schedule of selling prices. Each sale or transaction involving a violation of posted prices under this chapter is but a single offense or violation of this chapter regardless of the number of articles covered by the sale or transaction.

(Amended by Stats. 1967, Ch. 1080.)

25005. Any director, officer, agent, or employee of any licensee who knowingly assists or aids in the violation of this chapter or any effective posted price or any rule of the department passed to carry out the provisions of this chapter is guilty of the violation equally with the licensee.

(Amended by Stats. 1955, Ch. 447.)

25006. The department may adopt such rules, including but not limited to rules respecting beer price posting, as will foster and encourage the orderly wholesale marketing and wholesale distribution of beer, but no such action shall be taken by the department except after public hearing and ten (10) days notice to all licensed manufacturers of beer in California of the time and place of the hearing and of the character of the action intended to be taken by the department.

(Amended by Stats. 1955, Ch. 447.)

25007. Except as provided in Section 25000.5, no manufacturer, importer, or wholesaler mentioned in this chapter is prohibited the right of choice of customers.

(Amended by Stats. 1972, Ch. 760.)

25008. (a) Any trade association having as members licensed beer manufacturers or licensed beer wholesalers representing more than half of the volume of beer sold in California for three months prior to the date of a filing of any suit authorized in this chapter

may maintain an action to enjoin a continuance of any act or acts in violation of this chapter or any rule adopted pursuant thereto and, if injured thereby, for the recovery of damages. If in the action the court finds the defendant is violating or has violated any of the provisions of this chapter or any rule adopted pursuant thereto, the court shall enjoin the defendant from a continuance or further violation thereof. It shall not be necessary that actual damages to the plaintiff be alleged or proved in the action, and proof of a violation of this chapter or any rule adopted pursuant thereto shall be presumptive evidence of an intention to continue to violate this chapter or any such rule.

(b) Any trade association having as members licensed beer manufacturers or licensed beer wholesalers representing more than half of the volume of beer sold in California for three months prior to the date of a filing of a petition to intervene shall, upon the filing of the petition, be permitted to intervene as a party in any proceeding, whether before the department, any other administrative agency, or any court, which involves, in whole or part, the validity of any portion of the Alcoholic Beverage Control Act or of any rule adopted pursuant thereto. Intervention shall be permitted, upon petition, at any time before a final determination or adjudication has been rendered in the proceeding. In the case of an adjudicatory proceeding, an intervening trade association shall have the same right to participate in discovery and trial as any other party.

(Amended by Stats. 1984, Ch. 131, Sec. 2. Effective May 21, 1984.)

25009. Any defendant in any action brought under this chapter or any person who may be a witness therein under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure or Section 776 of the Evidence Code, and the books and records of the defendant or witness, may be brought into court and the books and records may be introduced by reference into evidence, but no information so obtained may be used against the defendant or the witness as a basis for a misdemeanor prosecution under this chapter.

(Amended by Stats. 2005, Ch. 294, Sec. 1. Effective January 1, 2006.)

25010. The department shall not suspend or revoke the license of any licensee for a violation of the provisions of this chapter or a rule adopted pursuant thereto unless he has committed, within a period of one year, at least three separate violations of the provisions of this chapter or of any rule adopted pursuant thereto, and the violations have been proved by any of the following methods:

(a) A conviction for misdemeanor.

(b) A judgment in a civil suit for injunction as provided in this chapter.

(c) A finding of the department, if a hearing is held in accordance with Chapters 7 and 8 of this division.

(Amended by Stats. 1955, Ch. 447.)