Chapter 474

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Trade Practices Relating to Malt Beverages

474.005 Definitions

474.007 Wholesale distribution agreements to be in writing

474.011 Good cause required for termination, cancellation or failure to renew agreement

474.015 Grounds for termination, cancellation, failure to renew or refusal to continue agreement

474.025 Successor bound by agreement

474.035 Transfer by wholesaler; when conditions may be imposed by supplier

474.045 Supplier prohibited from interfering with transfer by wholesaler

474.055 Supplier prohibited from requiring wholesaler to assent to certain changes in agreement; provisions in violation of ORS 474.005 to 474.095 void

474.065 Limit on authority of supplier to prohibit change in manager of wholesaler

474.075 Supplier's duty to show it acted reasonably

474.085 Remedies of party aggrieved by violation of ORS 474.005 to 474.095

474.095 Prohibited conduct of supplier

474.105 Legislative finding on ORS 474.115

474.115 Wholesale sale of malt beverage subject to agreement designating territory of sale

CROSS REFERENCES

Alcoholic beverage regulation, generally, Ch. 471

474.005 Definitions. As used in ORS 474.005 to 474.095, unless the context requires otherwise:

(1) "Importer" means any wholesale distributor importing malt beverages into this state for sale to retailer accounts or for sale to other wholesalers designated as subjobbers for resale.

(2) "Malt beverage manufacturer" means any manufacturer, brewer, importer or master distributor of malt beverages located within or outside this state, or any other person, whether located within or outside this state who enters into an agreement of distributorship for the resale of malt beverages in this state with any wholesale distributor doing business in the State of Oregon.

(3) "Person" means any natural person, corporation, partnership, trust, agency or other entity, as well as any individual officers, directors or other persons in active control of the activities of such entity.

(4) "Supplier" means any malt beverage manufacturer, agent of a malt beverage manufacturer, importer or holder of a certificate under ORS 471.289 who enters into or is a party to any wholesale distribution agreement with a wholesale distributor.

(5) "Wholesale distribution agreement" means any contract, agreement, commercial relationship, license, association or any other arrangement for a definite or indefinite period between a supplier and wholesale distributor.

(6) "Wholesale distributor" means any person importing or causing to be imported into this state, or purchasing or causing to be purchased within this state, any malt beverage for sale or resale to retailers licensed under the laws of this state, regardless of whether the business of such person is conducted under the terms of any agreement with a malt beverage manufacturer. [1989 c.529 §1]

474.007 Wholesale distribution agreements to be in writing. All wholesale distribution agreements between a supplier and a wholesaler shall be in writing, signed by the parties or their authorized agents. [1989 c.529 §2]

474.010 [Amended by 1953 c.342 §3; 1963 c.137 §1; 1974 s.s. c.67 §4; repealed by 1977 c.745 §54]

474.011 Good cause required for termination, cancellation or failure to renew agreement. (1) No supplier shall terminate, cancel or fail to renew a distribution agreement upon expiration of its term or refuse to continue under the agreement without good cause. Good cause exists when a wholesaler fails to comply with a provision of the written agreement that is both reasonable and of material significance to the business relationship between the supplier and the wholesaler and all of the following occur:

(a) The supplier gave written notice to the wholesaler of the failure to comply within two years of acquiring knowledge of the breach;

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

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

(d) The supplier acted in good faith.

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

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

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

(b) The good will of the business.

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

(5) As used in subsection (3) of this section, "fair market value" means the highest dollar amount at which a seller would be willing to sell and a buyer willing to buy when each possesses all information relevant to the transaction. [1989 c.529 §3]

474.014 [1961 c.572 §2; repealed by 1977 c.745 §54]

474.015 Grounds for termination, cancellation, failure to renew or refusal to continue agreement. (1) A supplier may terminate or cancel an agreement immediately, fail to renew an agreement upon ex-

piration of its term or refuse to continue under the agreement if:

(a) The state or federal license of the wholesaler has been revoked or suspended for a period of more than 31 days;

(b) The wholesaler is insolvent within the definition of section 101, title 11, United States Code, or there has been a liquidation, dissolution or assignment for the benefit of creditors of substantially all of the assets of the wholesaler's business, or an order for relief under chapter 7, title 11, United States Code, has been entered with respect to the wholesaler;

(c) The wholesaler, or any individual who holds or owns 10 percent or more of the stock or value of the wholesaler, has been convicted of, or pleads guilty to, a felony;

(d) The wholesaler has committed a fraud in its dealings with the supplier or the supplier's products;

(e) The wholesaler makes a substantial misrepresentation to the supplier which the wholesaler knew to be false and which the supplier relied upon to its detriment;

(f) An assignment of the wholesaler's rights under a distribution agreement, or a change of a controlling ownership interest, other than that caused by the death or legal incapacity of the wholesaler, has been made without written notice as provided in the written distribution agreement, and the supplier has given written notice to the wholesaler of the supplier's intention to terminate on the grounds of transfer without notice unless the transfer was reversed within 30 days from receipt of the notice; or

(g) An assignment of wholesaler's rights is made despite timely and proper notice of disapproval.

(2) In the event of a termination pursuant to this section, the termination shall become effective upon the wholesaler's receipt of written notice thereof. [1989 c.529 §4]

474.016 [1961 c.572 §3; repealed by 1977 c.745 §54]

474.020 [Amended by 1957 c.587 §1; repealed by 1971 c.743 §432]

474.025 Successor bound by agreement. A successor to a supplier or wholesaler, whether by way of merger, purchase of corporate shares, purchase of assets or otherwise, shall be bound by each distribution agreement the predecessor was a party to at the time of transfer with respect to each brand the successor continues to make available for sale in this state. [1989 c.529 §5]

474.030 [Repealed by 1977 c.745 §54]

474.035 Transfer by wholesaler; when conditions may be imposed by supplier. (1) A wholesaler may transfer, bequeath or devise the wholesaler's business or share in any wholesale business to the deceased wholesaler's spouse, parent, siblings or issue to succeed the decedent in ownership of the business.

(2) A supplier may provide in writing for prior approval of any other individual designed or designated to succeed a wholesaler in ownership of the business. Conditions of approval by the supplier shall be reasonable with respect to both the supplier's and the wholesaler's interest. [1989 c.529 §6]

474.040 [Repealed by 1977 c.745 §54]

474.045 Supplier prohibited from interfering with transfer by wholesaler. No supplier shall interfere with, prevent or unreasonably delay the transfer of the wholesaler's business or any interest therein if the wholesaler has provided the supplier with written notice of the intent to transfer and the transferee meets reasonable standards and qualifications required by the supplier which are nondiscriminatory and are applied uniformly to all wholesalers similarly situated. [1989 c.529 §7]

474.050 [Amended by 1957 c.587 §2; repealed by 1977 c.745 §54]

474.055 Supplier prohibited from requiring wholesaler to assent to certain changes in agreement; provisions in violation of ORS 474.005 to 474.095 void. (1) No supplier shall require a wholesaler to assent to any condition or amendment to a wholesale distribution agreement that impairs any right guaranteed under ORS 474.005 to 474.095, or that was not made in good faith or that is unreasonable. Nothing in this section shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.

(2) Any terms or conditions of any wholesale distribution agreement contrary to the provisions of ORS 474.005 to 474.095 are void. [1989 c 529 §8]

474.060 [Amended by 1955 c.60 §1; repealed by 1977 c.745 §54]

474.065 Limit on authority of supplier to prohibit change in manager of wholesaler. No supplier shall prohibit any change in the manager or successor manager of a wholesaler unless the manager or successor manager fails to meet reasonable standards for such position which are nondiscriminatory and are applied uniformly to all wholesalers similarly situated. [1989 c.529 §9]

474.070 [Repealed by 1977 c.745 §54]

474.075 Supplier's duty to show it acted reasonably. For each dispute arising out of an allegation of bad faith termination or for termination for other than good cause, the supplier shall have the burden of proving that it acted reasonably and in good faith, that good cause existed for any termination,

cancellation, discontinuance or nonrenewal and that the supplier complied with the applicable requirements of the law. [1989 c.529 §10]

474.080 [Amended by 1957 c.587 §3; 1967 c.117 §1; 1971 c.477 §1; repealed by 1977 c.745 §54]

474.085 Remedies of party aggrieved by violation of ORS 474.005 to 474.095. (1) Any party to a wholesale distribution agreement aggrieved by a violation of any provision of ORS 474.005 to 474.095 shall be entitled to:

(a) Injunctive relief enjoining the violation; and

(b) Recovery for damages caused by the violation.

(2) The party is entitled to reasonable attorney fees and costs at trial and on appeal.

(3) If the violation consists of a termination, cancellation, refusal to renew or refusal to permit a transfer of the wholesaler's business in contravention of ORS 474.005 to 474.095, damages shall include the decrease in the value of the wholesaler's business caused by the violation, including any decrease attributable to the loss of good will, less any mitigation. [1989 c.529 §11]

474.090 [Repealed by 1977 c.745 §54]

474.095 Prohibited conduct of supplier. No supplier shall:

(1) Coerce or induce, or attempt to coerce or induce, any distributor to engage in any illegal act or course of conduct;

(2) Require a wholesaler to assent to any unreasonable requirement, condition, understanding or term of an agreement which prohibits a wholesaler from selling the product of any other supplier or suppliers;

(3) Require a wholesale distributor to accept delivery of any product or any other item or commodity that was not ordered by the wholesale distributor;

(4) Fail or refuse to enter into a wholesale distribution agreement with a wholesale distributor that handles the supplier's products; or

(5) Take any action that is intended to circumvent the provisions of ORS 474.005 to 474.095. [1989 c.529 §12]

474.100 [Amended by 1971 c.743 §375; repealed by 1977 c.745 §54]

474.105 Legislative finding on ORS 474.115. The Legislative Assembly finds that in addition to the purposes specified in ORS 471.030, ORS 474.115 is necessary to maintain and to promote the continued availability of good quality malt beverages for the consumers of Oregon, to promote the orderly marketing of malt beverages, to promote vigorous interbrand malt beverage competition, to encourage competition by the entry of new competitors, to implement the required record-keeping provisions and to facilitate collection of the revenue. [Formerly 471.502]

Note: 474.105 and 474.115 were enacted into law by the Legislative Assembly and were added to and made a part of ORS chapter 471 but were not added to or made a part of ORS chapter 474 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

474.110 [Repealed by 1971 c.743 §432]

474.115 Wholesale sale of malt beverage subject to agreement designating territory of sale. (1) It shall be unlawful for any wholesaler to sell any brand of malt beverage in this state except in the territory described in an agreement with the manufacturer or importer authorizing sale by the wholesaler of the brand within a designated territory. Within the designated territory the wholesaler must service as provided in subsection (2) of this section all of the customers without discrimination. The territorial agreement must be in writing and must specify the brand or brands it covers. Where a manufacturer or importer sells several brands, the agreement need not apply to all brands sold by the manufacturer or importer and may apply only to one brand. No manufacturer or importer shall provide by the written agreement for the distribution of a brand to more than one distributor for all or any part of the designated territory. All such agreements shall be filed with the Oregon Liquor Control Commission.

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

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

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

(3) An exclusive territorial designation in any agreement shall be changed only upon the written notice of the manufacturer and shall be filed pursuant to this section and ORS 474.105. The commission shall require the manufacturer to verify that the level of service within the designated territory will not be affected by the change. The notice shall only be given after recognizing all rights of the wholesaler and duties of the manufacturer contained in any written agreement between them. However, if a wholesaler is prevented from servicing the

territory due to fire, flood, labor disputes or other causes beyond reasonable control, and if first given permission by the duly licensed exclusive wholesaler of that area and approved by the manufacturer and the commission, another licensed wholesaler not within the designated area may sell the specified brands of malt beverage in that designated area.

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

(b) No provision of any agreement between any manufacturer and importer shall expressly or by implication, or in its operation, establish or maintain the resale price of any brand or brands of malt beverage by the wholesaler. [Formerly 471.503]

Note: See note under 474.105.

474.120 [Repealed by 1977 c.745 §54]

474.130 [Amended by 1957 c 587 §4; 1971 c.743 §376; repealed by 1977 c.745 §54]

474.140 [Repealed by 1977 c.745 §54]

474.150 [Repealed by 1977 c.745 §54]

474.160 [Repealed by 1977 c.745 §54]

474.170 [Repealed by 1971 c.743 §432]

474.180 [Repealed by 1971 c.743 §432]

474.190 [Repealed by 1977 c.745 §54]

474.200 [Repealed by 1977 c.745 §54]

474.210 [Repealed by 1971 c.743 §432]

474.220 [Repealed by 1977 c.745 §54]

474.990 [Amended by 1955 c.330 §1; 1957 c.587 §5; 1961 c.648 §11; 1969 c.310 §1; 1971 c.743 §377; repealed by 1977 c.745 §54]