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Jeffrey C. O'Brien

THE CRAFT BREWING BOOM AND MINNESOTA'S THREE-TIER SYSTEM: THE CASE FOR CHANGE

Jeffrey C. O'Brien†

I. INTRODUCTION

> Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

> Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.
>
> —Twenty-First Amendment to the U.S. Constitution[1]

The past five years have been good for Minnesota beer and breweries. "Between 2011 and 2016, the number of licensed breweries in Minnesota more than quadrupled, according to the Department of Public Safety."[2] This boom was largely driven by the

† Jeffrey C. O'Brien is an attorney with the Minneapolis-based law firm of Chestnut Cambronne, practicing in the areas of business and real estate. He is a 2000 graduate of William Mitchell College of Law. Mr. O'Brien has been working with craft breweries in Minnesota and beyond since 2009. Presently he represents over fifty craft breweries, distilleries, and cideries. He is also a frequent author, commentator, and speaker on issues pertaining to craft beverages and liquor laws in general, and he is currently working on *Brew Law 101, Minnesota Edition: A Legal Guide to Opening a Brewery*, a comprehensive guide to the myriad of legal issues—both federal and state—facing prospective brewery owners as they start their businesses.

1. U.S. CONST. amend. XXI, §§ 1–2. The Eighteenth Amendment of the United States Constitution effectively established the prohibition of alcoholic beverages in the United States by declaring the production, transport, and sale of alcohol (though not the consumption or private possession) illegal. *Id.* amend. XVIII (repealed 1933). The separate Volstead Act set down methods for enforcing the Eighteenth Amendment and defined which "intoxicating liquors" were prohibited and which were excluded from prohibition (e.g., for medical and religious purposes). National Prohibition Act of 1919, Pub. L. No. 66-66, § 85, 41 Stat. 305, 307–08. The amendment's ratification was certified on January 16, 1919, with it taking effect on January 16, 1920. U.S. CONST. amend. XVIII (repealed 1933). The text of the Eighteenth Amendment is as follows:

> Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all the territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.
>
> Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.
>
> Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Id.

2. Greta Kaul, *The Number of Breweries Launched in Minnesota Went Down in*

passage of legislation that allows production breweries to sell their products on-premise in taprooms and has also led to further legislative reforms, including Sunday on-premise taproom sales and Sunday growler sales (an exception to Minnesota's longstanding ban on off-premise Sunday liquor sales).[3] Further reforms loom on the horizon as Minnesota's liquor laws—much of which are defined by the Department of Public Safety's Alcohol and Gambling Enforcement Division—undergo annual clarification and revision.[4]

Many of the aforementioned reforms represent exceptions to the "entrenched three-tier distribution system" of alcohol: manufacturers, wholesalers, and retailers. This system, which has existed since Prohibition's repeal in 1933, is maintained largely at the behest of the wholesalers, who desire to preserve their state-granted monopoly on liquor distribution.[5] As a result, any changes to this system that would benefit breweries face stiff resistance from wholesalers and, in some cases, retailers. Further, the franchise-distribution statutes enacted in the 1960s and 1970s have, in this era of craft breweries and consolidation of wholesalers, afforded wholesalers an unequal amount of bargaining power in their contract negotiations with small local breweries.[6] Fortunately, states are recognizing the need to correct this imbalance and creating an avenue for smaller breweries to terminate relationships with their distributors if the relationship is not a good fit.[7] The Minnesota Legislature, however, has yet to enact or even consider such a concept.

2016. Has the Brewery Boom Peaked?, MINNPOST (Jan. 19, 2017), https://www.minnpost.com/business/2017/01/number-breweries-launched-minnesota-went-down-2016-has-brewery-boom-peaked.

3. *Id.* Soon after the writing of this article, the Minnesota Legislature passed a bill allowing off-premise Sunday liquor sales, which went into effect on July 1, 2017. *See* MINN. STAT. 340A.504, subdivs. 4(a)(1), (b) (2017); Doualy Xaykaothao, *Sunday Liquor Sales Now Legal in Minnesota*, MPR NEWS (July 1, 2017, 4:55 PM), https://www.mprnews.org/story/2017/07/02/sunday-liquor-sales-now-legal-in-minnesota.

4. *See, e.g.*, Jess Fleming, *Why Can't Minnesota Taprooms Also Serve Cocktails? Local Kickstarter Seeks Changes*, PIONEER PRESS (Dec. 29, 2016), http://www.twincities.com/2016/12/29/bent-brewstillery-launches-kickstarter-to-change-cocktail-room-law/.

5. DOUGLAS GLEN WHITMAN, STRANGE BREW: ALCOHOL AND GOVERNMENT MONOPOLY 1 (2003).

6. Bart Watson, *Franchise Laws: Leveling the Playing Field*, BREWERS ASS'N (Dec. 17, 2014), https://www.brewersassociation.org/insights/franchise-laws/.

7. *See infra* Section III.D.

This article provides an overview of the legal issues that make up the area of practice referred to as "brewery law."[8] This article also provides a history of the three-tier system and the franchise-termination provisions of state beer-distribution laws that are central to this system.[9] Finally, this article discusses the recent enactment of so-called "small-brewer exemptions" from franchise-termination provisions; these exemptions, if enacted in Minnesota, could help adjust the bargaining power between Minnesota breweries and wholesalers while maintaining the protections for wholesalers from large multinational "macro" brewers, such as Anheuser-Busch InBev NV (the maker of Budweiser and other popular national brands, commonly known as "AB InBev"), which was the original purpose for the distribution law in the 1970s and which remains a valid purpose today.[10]

II. WHAT IS BREWERY LAW?

"Brewery law" refers to an amalgamation of practice areas, including entity formation, real estate, intellectual property, securities, and regulatory law. Attorneys practicing in the area must advise clients on a broad spectrum of legal issues:

- name clearance
- entity formation, including buy-sell arrangements
- trademark registration
- real estate issues (lease or purchase)
- employment and non-compete agreements
- federal and state securities-law compliance
- federal, state, and local licensing
- distribution contracts

It is imperative for brewery lawyers to not only keep abreast of pending changes in the law but also be prepared to seek legislative action to remove potential obstacles to clients' business objectives. Franchise-distribution laws that serve to maintain the supremacy of

8. *See infra* Part II.
9. *See infra* Part III.
10. *See infra* Part III. For example, antitrust regulators at the U.S. Department of Justice are presently reviewing craft brewers' claims that AB InBev pushes some independent distributors to only carry AB InBev's products and end distributors' ties with the craft industry. Diane Bartz, *U.S. Probes Allegations AB InBev Seeking to Curb Craft Beer Distribution*, REUTERS (Oct. 12, 2015), http://www.reuters.com/article/us-abinbev-doj-antitrust-exclusive-idUSKCN0S623R20151012.

the three-tier system of alcohol distribution are at the heart of these obstacles.

III. THE THREE-TIER DISTRIBUTION SYSTEM IN THE AGE OF CRAFT BREWING

A. *History and Overview of the Three-Tier System*

In 1933, the Twenty-First Amendment to the United States Constitution repealed Prohibition but also gave states the authority to regulate the production, importation, distribution, sale, and consumption of alcoholic beverages within their own borders.[11] A new regulatory system known as the "three-tier system" emerged, "consisting of suppliers (brewers, vintners, and importers), wholesalers (also known as distributors) and retailers (liquor stores, restaurants, and so on)."[12] This system was established by states to "prevent vertical integration in the industry," i.e., the so-called "tied-houses"—saloons owned and operated by the breweries themselves—that some blamed for the "abuses in the pre-Prohibition era."[13] Tied-houses would no longer exist; instead, beer would be sold through independent distributors.[14]

Although each state has its own set of laws governing the three-tier system, the separation of the three tiers by inserting an independent distributor between the brewers and the retailers is a common thread. In the three-tier system—brewer, distributor, retailer—laws and regulations prohibit brewers, distributors, and retailers from having any financial interest in each other. For example, breweries cannot sell on credit or by consignment.[15]

B. *State Distribution Laws*

A distribution agreement governs the relationship between a brewer and its distributor/wholesaler.[16] State distribution

11. *See* U.S. CONST. amend. XXI, § 2.
12. WHITMAN, *supra* note 5, at 1.
13. *Id.*
14. *Id.*
15. *Id.*
16. ROBERT CATTANACH, ET AL., WINE AND BEER LAW: LEADING LAWYERS ON NAVIGATING THE THREE-TIER SYSTEM AND OTHER REGULATIONS ON ALCOHOLIC BEVERAGES 7–8 (Thomson Reuters & Aspatore eds., 2016).

laws—sometimes referred to as "beer-franchise laws" or "franchise-termination laws"—oftentimes contain provisions overriding the parties' negotiated contract terms.[17] These state distribution laws, which some commentators refer to as "monopoly protection laws," are critical to the maintenance of the three-tier system.[18] Distribution laws vary between states.[19] However, at the heart of most of these laws is a requirement that the supplier show "good cause" for termination or nonrenewal of a contract even when the contracts in question specifically provide otherwise.[20]

What qualifies as "good cause" differs from state to state, but often the term is taken to rule out economic considerations that might typically prompt a brewery to terminate its relationship with a wholesaler, such as the wholesaler's failure to meet contractual sales quotas or failure to ensure proper quality control of the beer once the wholesaler takes possession of the beer.[21] The laws also typically require advance notice of termination, give wholesalers a month or more to cure any supposed problems, and prevent any contractual waiver of the law's mandates. In addition, they provide for exclusive wholesaler territories.[22]

C. *Minnesota's Beer-Distribution Law*

1. *Creation of the Distribution Agreement*

The Minnesota Beer Brewers and Wholesalers Act (the "Act") is codified at Minnesota Statutes chapter 325B. Despite several challenges brought against the Act by brewers since its passage, courts have consistently upheld the constitutionality of the Act and have found that it has the legitimate purposes of "prohibit[ing]

17. Mark E. Sorini, *Beer Franchise Law Summary*, BREWERS ASS'N (2014), https://www.brewersassociation.org/wp-content/uploads/2015/06/Beer-Franchise-Law-Summary.pdf; *Franchise Laws*, BREWERS ASS'N, https://www.brewersassociation.org/government-affairs/laws/franchise-laws/ (last visited Mar. 26, 2017); *Self-Distribution Laws*, BREWERS ASS'N, https://www.brewersassociation.org/government-affairs/laws/self-distribution-laws/ (last visited Mar. 26, 2017).

18. *See* Sorini, *supra* note 17, at 2.

19. *See infra* Part VI, Appendix (summarizing each state's distribution law).

20. WHITMAN, *supra* note 5, at 2.

21. *See* Sorini, *supra* note 17.

22. *Id.*

brewers from fixing wholesale prices, coercing wholesalers to accept delivery of unordered products, or discriminating among wholesalers."[23]

The Act is particularly favorable to wholesalers by virtue of the fact that it allows for a distribution agreement to be created between a brewer and wholesaler without so much as a written contract.[24]

2. Termination Restrictions

Most, if not all, state beer-distribution laws significantly restrict the brewer's ability to terminate its distribution agreement. In Minnesota, the Act provides,

> 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 . . . has satisfied the notice and opportunity to cure requirements of [Minnesota Statutes] Section 325B.05; has acted in good faith; and has good cause for the cancellation, termination, nonrenewal, discontinuance, or forced resignation.[25]

The termination restrictions the Act imposes upon brewers are significant because, in general contract law situations, if one party to

23. Arneson Distrib. Co., Inc. v. Miller Brewing Co., 117 F. Supp. 2d 905, 909 (D. Minn. 2000); *see* Crowley Beverage Co., Inc. v. Miller Brewing Co., 862 F.2d 688, 691 (8th Cir. 1988). Note, however, that the Minnesota Supreme Court did find retroactive application of the Act to be unconstitutional. Jacobsen v. Anheuser-Busch Inc., 392 N.W.2d 868, 875 (Minn. 1986).

24. *See* MINN. STAT. § 325B.01, subdiv. 2 (2016) ("'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.").

25. *Id.* § 325B.04, subdiv. 1.

a contract is not performing its obligations as outlined within the contract, the other party often has the ability to terminate the contract as a remedy for the non-performance.[26] In the case of a brewer, however, if its wholesaler fails to adequately perform per the parties' distribution agreement—and provided that the nonperformance rises to the level of "good cause" per the Act—the brewer is prohibited under the Act from simply terminating the agreement without any further obligation.[27]

3. What Constitutes "Good Cause"?

Minnesota law provides the following definition for "good cause" for a brewer's termination of a wholesaler agreement:

> "Good cause" includes, but is not limited to, the following:
>
> (1) revocation of the wholesaler's license . . . ;
>
> (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.[28]

"'Good cause' does not," however, "include the sale or purchase of a brewer."[29]

Very few cases have been decided under the Act, and those cases offer minimal guidance on the issue of what constitutes "good

26. Fishman, *Breach of Contract and Non-Performance*, LAWYERS.COM (July 23, 2015), http://business-law.lawyers.com/small-business-law/breach-of-contract-and-non-performance.html ("A total breach of contract will also usually terminate the nonbreaching party's duty to perform any of the promises he or she made in the contract.").

27. *See* MINN. STAT. § 325B.04, subdiv. 1 (listing all of the requirements for termination in addition to "good cause"); *see also* Sorini, *supra* note 17 (providing an overview of termination requirements in Minnesota).

28. MINN. STAT. § 325B.04, subdiv. 2(a).

29. *Id.* § 325B.04, subdiv. 2(b).

cause."[30] In *Arneson Distributing Co. v. Miller Brewing Co.*,[31] the United States District Court for the District of Minnesota suggested that "good cause" sufficient to trigger a brewer's right to terminate its distribution agreement must be tied to the wholesaler's performance.[32] The good-cause requirement is significant because, without a showing of "good cause," the Act requires a brewer to pay its wholesaler "reasonable compensation for the value of the wholesaler's business with relationship to the terminated brand or brands."[33] Given that the Act fails to define "reasonable compensation," the brewer is thus left with the choice of paying the wholesaler's ransom to release its brands or to engage in a costly arbitration proceeding to ultimately ascertain the amount to be paid.[34]

4. *Notice Requirement*

As in many states, the Act has detailed notice requirements for contract termination:

> 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.[35]

"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."[36] "In no event may a termination, cancellation, discontinuance, or nonrenewal be effective until at least 90 days

30. *See, e.g.*, Arneson Distrib. Co., Inc. v. Miller Brewing Co., 117 F. Supp. 2d 905, 910 (D. Minn. 2000) ("A brewer's legitimate business reason is not consistent with examples of 'good cause' given by the statute.").

31. *Id.*

32. *Id.*

33. MINN. STAT. § 325B.07, subdiv. 1.

34. *See id.* § 325B.07, subdiv. 2.

35. *Id.* § 325B.05, subdiv. 1(a).

36. *Id.* § 325B.05, subdiv. 1(b).

from the wholesaler's receipt of written notice under this section, unless the wholesaler has consented in writing to a shorter period."[37] This lengthy cure period—particularly in relation to a failure by the wholesaler to "substantially comply, without reasonable excuse or justification, with any reasonable and material requirement"—provides the wholesaler with ample time to remedy most, if not all, performance related violations.[38] Hence, the good-cause prerequisite for a brewer's termination of its wholesaler essentially acts to create a lifetime relationship between brewer and wholesaler.

5. *Reasonable Compensation*

The Act defines "reasonable compensation":

> Any brewer which . . . terminates, or refuses to continue or renew any beer agreement . . . unless for good cause shown as defined in section 325B.04, from an agreement . . . 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.[39]

Determination of value is a complicated task, as the Act provides no guidance whatsoever as to how value is to be determined, and in practice wholesalers have significant discretion in setting the termination price for the brewer.[40]

37. *Id.* § 325B.05, subdiv. 1(c). Note, however, that pursuant to Minnesota Statutes section 325B.05, subdivision 2,

> 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.

38. *See* Sorini, *supra* note 17 (stating typical cure period lengths, with ninety days being the longest, as well as giving a list of all cure periods by state); *see also* Joseph P. Wright & Thomas B. Aquino, *The Right to Cure a Contract Breach*, WIS. LAW., Oct. 2010, at 14, 64 (describing how, under Wisconsin law, cure requirements must be reasonable for the ninety-day time period given).

39. MINN. STAT. § 325B.07, subdiv. 1.

40. *See* Ryan Hermes, *Dogfish Head v Glunz; The Battle Over "Reasonable*

The Act also mandates the proper form of arbitration if a brewer and wholesaler cannot determine reasonable compensation:

> 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.[41]

As a result of these decidedly pro-wholesaler termination provisions—termination only for "good cause," which is narrowly defined within the Act, and the requirement that a brewer pay "reasonable compensation" to the wholesaler—the entry into a beer-distribution agreement essentially amounts to a lifetime arrangement.

D. *Recent Exceptions to the Three-Tier System*

Despite opposition from entrenched special interests, Minnesota breweries have fought for and won significant legislative exemptions from the general three-tier rule. The most notable exemptions are self-distribution rights, sales of growlers and 750 milliliter bottles for off-premises consumption, and, of course, the 2011 taproom law.

1. *Self-Distribution Rights*[42]

Many states—including Minnesota—permit breweries below a certain production threshold to distribute their product directly to retailers without the use of a distributor. Self-distribution has the advantage of personal, hands-on selling that most beer distributors

Compensation," GUYS DRINKING BEER (Nov. 1, 2012), http://www.guysdrinkingbeer.com/dogfish-head-v-glunz-the-battle-over-reasonable-compensation/ (describing initial legal steps taken over a battle of what constitutes "reasonable compensation" and demonstrating the leeway wholesalers have in trying to define it).

41. MINN. STAT. § 325B.07, subdiv. 2. As of July 31, 2017, no cases exist interpreting what constitutes "reasonable compensation" under Minnesota Statutes section 325B.07, subdivision 2.

42. *See infra* Part VI, Appendix (summarizing each state's distribution law).

cannot offer.[43] Self-distribution, however, is very time consuming and resource intensive. In many cases, small brewers start with self-distribution for the first few years to gain good product representation and placement, then turn the distribution over to a beer wholesaler as sales and demand for their beers increase.

Although self-distribution can be a viable means around the complex and onerous franchise laws, the time and capital required to operate an effective distribution system is significant and tends to detract from other operations. Further, breweries that grow beyond the production thresholds are forced into the franchise system as they lose their rights of self-distribution.

Minnesota's self-distribution law is codified in Minnesota Statutes section 340A.301, subdivision 9(g). It provides that a brewer manufacturing "no more than 20,000 barrels of malt liquor or its metric equivalent in a calendar year may own or have an interest in a malt liquor wholesaler that sells only the brewer's products."[44] A brewer manufacturing between 20,000 and 25,000 barrels in a year may "continue to own or have an interest in a malt liquor wholesaler that sells only the brewer's products if: (1) that malt liquor wholesaler distributes no more than 20,000 barrels per calendar year; and (2) the brewer has not manufactured 25,000 barrels in any calendar year."[45]

2. *Sales of Growlers and 750 mL Bottles for Off-Premises Consumption*

Under Minnesota law, a brewer who brews not more than 20,000 barrels of its own brands of malt liquor annually may be issued a license by a municipality[46] for off-sale of malt liquor that has been produced and packaged by the brewer at its licensed premises.[47] The

43. Jeffrey C. O'Brien & Gregory B. Perleberg, *Ten Key Legal Steps You Need to Start Your Own Brewery*, THE GROWLER (Dec. 18, 2012), http://growlermag.com/so-you-want-to-start-your-own-brewery/.

44. MINN. STAT. §340A.301, subdiv. 9(g).

45. *Id.*

46. Note that many of the exceptions noted herein which allow for a brewery to conduct off-premises sales are predicated on a license being issued by the municipality. This is presumably due to Minnesota's statutory allowance of "municipal liquor stores." *See id.* § 340A.601 *et seq.* Municipalities which operate such stores generally limit or prohibit private off-premises sales of liquor.

47. *Id.* § 340A.28, subdiv. 1; *see also id.* § 340A.24 (governing off-premises sales

Commissioner of the Department of Public Safety must approve the license, and a brewer may only have one such license.[48] The amount of malt liquor sold off-sale "may not exceed 500 barrels annually."[49] "Off-sale of malt liquor shall be limited to the legal hours for off-sale at exclusive liquor stores in the jurisdiction in which the brewer is located"; "the malt liquor sold off-sale must be removed from the premises before the applicable off-sale closing time at exclusive liquor stores, except that malt liquor in growlers" may only "be sold at off-sale on Sundays."[50] "Sunday sales must be approved by the licensing jurisdiction," and "hours may be established by those jurisdictions."[51]

Section 340A.285(a) requires that malt liquor be packaged in sixty-four-ounce "growlers" or in 750 millimeter bottles.[52] The containers need to bear a label identifying them as malt liquor and include the name of the malt liquor and the name and address of the brewer. The statute also states that the malt liquor will be "considered intoxicating liquor unless the alcohol content is labeled otherwise" on the container.[53]

3. *Taprooms*

Section 340A.26 provides that a municipality can issue a brewer taproom license to someone who already holds a brewer's license.[54] This brewer taproom license authorizes the brewer to sell malt liquor at the brewery or adjacent to the brewery.[55] The brewer taproom license also allows the brewer to operate a restaurant out of the brewery.[56]

related to brewpubs).

48. *Id.* § 340A.28, subdiv. 1.
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.* § 340A.285(a).
53. *Id.*
54. *See* Kaul, *supra* note 2.
55. MINN. STAT. § 340A.26, subdiv. 1(a).
56. *Id.*

4. *Effect of Exceptions to the Three-Tier System on the Growth of Minnesota's Brewing Industry*

Each of the aforementioned exceptions to the three-tier system—self-distribution, growler sales, and taprooms—has created a system that allows small breweries to operate without being forced to engage a distributor and thereby be governed by the franchise-termination rules. Particularly after the passage of the taproom law in 2011, the number of breweries in Minnesota increased exponentially. Local media site GoMN reported that "[i]n 2011 . . . there were 20 breweries in Minnesota,"[57] and five years later, the number of breweries receiving their licenses (sixteen) almost equaled the total number of breweries open in 2011, and the total number of licensed brewers in Minnesota as of mid-December 2016 was 107 (not including brewpubs, which run under a different liquor license).[58]

Many of the newest breweries, at least at the outset, relied almost entirely on self-distribution, growler sales, and a taproom to generate revenue. Some breweries continue to eschew the use of distributors well beyond their initial launch. An example of this style of brewery is Dangerous Man Brewing in Minneapolis,[59] which only makes its beer available in its taproom, in growlers, and in 750 mL bottles. It does not distribute its products to other bars, restaurants, or liquor stores. Dangerous Man is hailed as one of the Twin Cities' finest breweries and, in this author's opinion, has become a model for small breweries throughout the state.[60]

57. Melissa Turtinen, *Minnesota's Breweries Really Started to 'Grow Up' in 2016*, GOMN (Dec. 30, 2016, 12:39 PM), http://www.gomn.com/news/minnesotas-breweries-really-started-to-grow-up-in-2016.

58. *Id.*

59. DANGEROUS MAN BREWING CO., http://dangerousmanbrewing.com (last visited Mar. 26, 2017). Note: The author serves as Dangerous Man Brewing's legal counsel.

60. *See Best Taproom in the Metro—Dangerous Man Brewing Company—Best of MN 2014*, STAR TRIB. (May 16, 2014, 11:22 AM), http://www.startribune.com/best-taproom-in-the-metro-dangerous-man-brewing-company-best-of-mn-2014/257987121/; *see also Best Taproom Dangerous Man Brewing Co.*, CITYPAGES: BEST OF THE TWIN CITIES 2014, http://www.citypages.com/best-of/2014/food-and-drink/dangerous-man-brewing-co-7365912 (last visited Mar. 26, 2017). The author, who represents Dangerous Man, often hears the taproom-only business model referred to by others as the "Dangerous Man model." *See, e.g.*, John Garland, *Minneapolis-St. Paul Tap Room Directory*, HEAVY TABLE (Sept. 26, 2012),

E. *Small-Brewer Exemptions from State Distribution Laws*

Although previously created exemptions have helped, the core issue of the onerous effect that the franchise laws have on small brewers has been ignored in Minnesota. In effect, Minnesota law has chosen to put a "Band-Aid" on a broken leg. The time has come to address the disparate bargaining power that distributors have in contractual negotiations, which have resulted from a legislatively created and maintained leg-up on brewers.

In response to the continued consolidation of beer wholesalers in the United States and the imbalance in negotiations between larger wholesalers and small craft brewers, several states have created exemptions within their distribution laws for "small brewers."

- *Arkansas*: Small brewers within the state are fully exempt from any remedies under the state's franchise act.[61] An Arkansas statute defines a small brewery as a "licensed facility . . . that manufactures fewer than forty-five thousand (45,000) barrels[[62]] of beer, malt beverage, and hard cider per year for sale or consumption."[63]
- *Colorado*: Small brewers are exempt from the state's franchise protections.[64] A small brewer is defined as a brewery that produces "less than three hundred thousand gallons of malt beverages per calendar year."[65]
- *Illinois*: If a brewery's annual volume of supplied beer represents ten percent or less of a distributor's business, then the brewery may terminate a distributor agreement upon payment of reasonable compensation.[66] If the brewery and the distributor cannot agree to a reasonable-compensation term, a neutral arbitrator must decide.[67]

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http://heavytable.com/minneapolis-st-paul-tap-room-directory/.

61. ARK. CODE ANN. §§ 3-5-1102(12)(B), 3-5-1403(8)(A) (West, Westlaw through 2017 Reg. Sess. and 1st Extraordinary Sess.).

62. Author's Note: A barrel (Bbl) is the standard method for measuring kegs of beer; 1 barrel = 31 gallons.

63. ARK. CODE ANN. § 3-5-1403(8)(A).

64. *See* COLO. REV. STAT. ANN. § 12-47-406.3(8) (West, Westlaw through 2017 1st Reg. Sess. and 1st Extraordinary Sess.).

65. *Id.*

66. 815 ILL. COMP. STAT. ANN. 720/7(1.5) (West, Westlaw through 2017 Reg. Sess.).

67. *Id.* at 720/7(2). Note that Minnesota's Act already contains a similar provision for instances where a brewer "amends, cancels, terminates, or refuses to

- *Nevada*: In- and out-of-state small breweries are exempt from the state's franchise laws.[68] A small brewery is defined as a brewery that produces less than 2000 barrels per year.[69]
- *New Jersey*: Small breweries that sell beer representing less than twenty percent of a distributor's gross sales may terminate an agreement upon paying compensation.[70]
- *New York*: Breweries that produce less than 300,000 barrels per year, inside or outside the state, and whose sales to a distributor represent less than three percent of the distributor's business may terminate an agreement upon paying compensation for the lost distribution rights.[71]
- *North Carolina*: A small brewer may terminate a wholesaler upon payment of compensation for the distribution rights with five days' written notice without establishing good cause.[72] North Carolina's alcoholic beverage statutes define a small brewer as "a brewery that sells, to consumers at the brewery, to wholesalers, to retailers, and to exporters, fewer than 25,000 barrels . . . of malt beverages produced by it per year."[73]
- *Pennsylvania*: In-state breweries having their principal place of business in the state are exempted from the state's franchise provisions.[74] Note, however, that the protections afforded solely to in-state manufacturers may constitute a violation of the Commerce Clause of the U.S. Constitution.[75]

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continue or renew any beer agreement, or causes a wholesaler to resign, unless for good cause." *See* MINN. STAT. § 325B.07 (2016).

68. NEV. REV. STAT. ANN. § 597.160(2) (West, Westlaw through 2017 Reg. Sess.).

69. *Id.*

70. *See* N.J. STAT. ANN. § 33:1-93.15(11)(d)(1) (West, Westlaw through L. 2017, c. 245 and J.R. No. 19).

71. N.Y. ALCO. BEV. CONT. LAW § 55-c(4)(c)(i)–(iv) (McKinney, Westlaw through 2017).

72. *See* N.C. GEN. STAT. ANN. § 18B-1305(a1) (West, Westlaw through 2017 Reg. Sess.).

73. *Id.* § 18B-1104(8).

74. 47 PA. STAT. AND CONS. STAT. ANN. § 4-431(d)(5) (West, Westlaw through 2017 Reg. Sess.).

75. Under the legal doctrine known as the Dormant Commerce Clause, the Commerce Clause's grant of the power to regulate commerce between the states to Congress under Article I of the U.S. Constitution implies a negative converse—a restriction prohibiting a state from passing legislation that improperly burdens or discriminates against interstate commerce. Under the Dormant Commerce Clause

- *Rhode Island*: As in Pennsylvania, breweries that are licensed in Rhode Island are exempted from the state's franchise laws.[76] Again, like Pennsylvania's statute, this protection for in-state manufacturers may pose problems under the Commerce Clause of the U.S. Constitution.[77]
- *Washington*: Small brewers producing less than 200,000 barrels annually are excluded from the state's franchise protections.[78]

The State of Massachusetts has previously considered an exemption for small breweries, and State Treasurer Deborah Goldberg recently announced that she is creating a "task force to create a more cohesive set of rules that 'deals with the 21st century,'" including changes to Massachusetts's distribution law, which would presumably make it easier for small brewers to terminate their distribution agreements.[79]

Small-brewer exemptions serve the purpose of relieving small craft brewers from some of the more onerous franchise-termination provisions of beer-distribution laws while preserving the protections afforded to distributors who are susceptible to strong-arm tactics from large "macro" breweries such as AB InBev.

Given the significant growth experienced in Minnesota's craft-brewing industry in the wake of the aforementioned exceptions to the three-tier system, and in order to continue to foster the growth of the craft-brewing industry within the state while protecting wholesalers from the unfair business practices engaged in by large

doctrine, discriminatory laws motivated by "simple economic protectionism" are subject to a "virtually per se rule of invalidity," *see City of Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978), which can only be overcome by a showing that the State has no other non-discriminatory means that would advance a legitimate local purpose just as well, *Maine v. Taylor*, 477 U.S. 131(1986). *See also* Brown-Forman Distillers v. N.Y. State Liquor Auth., 476 U.S. 573 (1986); Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333 (1977); Dean Milk Co. v. City of Madison, 340 U.S. 349 (1951).

76. 3 R.I. GEN. LAWS ANN. § 3-13-1(5) (West, Westlaw through Ch. 480 of the Jan. 2017 Sess.).

77. *See supra* note 75 (summarizing the Dormant Commerce Clause).

78. *See* WASH. REV. CODE ANN. § 19.126.020(10) (West, Westlaw through 2017 3d Spec. Sess.) (definition of supplier excludes smaller breweries).

79. Dan Adams, *"Everything Is on the Table" in Sweeping Review of State Alcohol Rules*, BOS. GLOBE (Jan. 18, 2017), http://www.bostonglobe.com/business/2017/01/18/everything-table-sweeping-review-state-alcohol-rules/acNHYjCrymSx0fVbppC6QO/story.html.

national and international brewers, the Minnesota Legislature should consider enacting a small-brewer exemption to the Act. Given that the existing exemptions, such as growlers and self-distribution rights, are keyed to a 20,000-barrel threshold, it would make sense to pattern a new exemption to the Act along similar lines, i.e., brewers who produce less than 20,000 barrels of beer annually would be exempt from the franchise provisions of the Act.

Although Dangerous Man may yet opt to sell its beers only at its brewery location, even with an exemption to the Act and consistent with its original business plan,[80] it is highly likely that other small breweries modeled after Dangerous Man may choose to expand outside distribution through a wholesaler with the knowledge that termination of such wholesaler would be far less complicated.

IV. PRACTICAL CONSIDERATIONS

Regardless of one's opinion about the enactment of a small-brewer exemption to the Act, the reality is that passage of such a provision as described herein could take a decade or more, if it is considered at all. Wholesalers wield tremendous clout at the capitol, and such an exemption would greatly reduce the leverage that wholesalers have in contract negotiations with brewers. Until such time when Minnesota enacts a small-brewer exemption to the Act, Minnesota's craft breweries must deal with the realities of the distribution system as it exists today and the imbalance they face within the three-tier system. To succeed in this current system requires a multi-pronged approach that includes the following strategies.

First, breweries should take full advantage of the existing exemptions. This means selling growlers (or their can equivalents, called "crowlers") out of the brewery and operating a taproom for on-premises sales of beer, as well as exercising self-distribution rights in the early life of the brewery to build the brand(s).

Second, when the time comes to select a distributor, breweries must choose one that not only suits their needs now but will also be appropriate down the road. Before letting a distributor promote their beer, breweries must obtain price sheets from each wholesaler

80. Chris Crowell, *Beware, Dangerous Man Brewing Opens Its Doors*, CRAFT BREWING BUS. (Jan. 7, 2013), https://www.craftbrewingbusiness.com/news/beware-dangerous-man-brewing-opens-its-doors.

in order to know which distributors carry the various brands in the market.

Third, breweries should talk with retailers to gain insight into which distributor they prefer dealing with; ask questions about salesperson service, product knowledge, enthusiasm, etc.; and learn which distributor understands and sells craft beers the best. Breweries should look around the retail accounts and festivals to find out which distributor seems to have the most meaningful presence, the most draft handles, and the best shelf positioning for craft beers. Talking with other craft brewers in the market to get their opinion from the supplier side is also a good idea. Once a brewery has chosen a distributor willing to carry its products, it must be sure to have its attorney draft a written distribution agreement.

V. How Law School Prepared Me to Be a Brewery Lawyer

My niche practice area of working with craft-beverage clients came about organically. Ever since being admitted to the bar in 2000, my practice focus has been transactional law—corporate formations, contracts, securities, intellectual property, real estate, and estate planning. Beginning in approximately 2007, I focused my marketing efforts largely on servicing the needs of startup businesses. In late 2009, that led me to work with my first brewery client, Flat Earth Brewing, in Saint Paul, Minnesota. It was then that I learned everything about the legal end of operating a brewery business in Minnesota, much of which falls into the scope of the general transactional areas that I had practiced in for almost a decade at that time.

Since my first year of law school at William Mitchell College of Law, I knew that I wanted to practice transactional law, both corporate and real estate. As such, the classes I took in law school, beyond the general requirements, were all geared toward this future practice area and laid the groundwork for what would ultimately become my brewery law practice niche. These classes included Corporate Finance, Real Estate Transactions, Business Entity Tax, and Intellectual Property. Given that the craft-beverage industry is a heavily regulated industry, having a working knowledge of administrative law did not hurt either.

As the craft-beverage industry continues to grow in Minnesota, law schools, particularly schools with a focus on practical skills such as Mitchell Hamline, the successor school to William Mitchell, may want to consider creating courses in industry-specific disciplines such as brewery law. The topics included in such a course would likely be of interest to law students and would provide an opportunity for students to experience the varied disciplines that go into practicing in this industry. Of course, a site visit or two would not hurt either!

VI. APPENDIX—SUMMARY OF STATE BEER-FRANCHISE/DISTRIBUTION AND SELF-DISTRIBUTION LAWS[81]

Alabama

Each brewer licensed to sell alcohol must enter into a territorial agreement, in writing, designating an exclusive territory that allows the sale of specific brands within that territory.[82] A brewery can terminate an agreement for good cause with sixty days' notice, but the wholesaler is allowed thirty days to submit a plan to cure defects and 120 days to cure those defects.[83] A brewery can immediately terminate an agreement if the wholesaler becomes insolvent, is convicted of a felony, or loses its license for more than sixty-one days.[84]

Alaska

To date, Alaska does not have a beer-franchise law.[85]

Arizona

Arizona does not require brewers to designate exclusive territories to sell their brands.[86] Any termination must be made in good faith and for good cause, which includes failing to comply with a term in the franchise agreement.[87]

Arkansas

Arkansas requires exclusive territories.[88] A brewery can terminate an agreement with thirty days' notice if good cause exists.[89] A brewery can immediately terminate an agreement under certain conditions, such as if a wholesaler becomes insolvent, loses its license for more than thirty-one days, is convicted of a felony, or commits fraud.[90] This statute provides that small brewers, those producing less than 45,000 barrels year, are exempt from these franchise/distribution provisions.[91]

81. *See* Sorini, *supra* note 17 (providing a similar summary in 2014).
82. ALA. CODE § 28-8-8(a)(2) (Westlaw through 2017 Reg. Sess.).
83. *Id.* § 28-9-6.
84. *Id.*
85. *See* Sorini, *supra* note 17, at 4.
86. ARIZ. REV. STAT. ANN. § 4-205.08 (Westlaw through 2017 First Reg. Sess.).
87. *Id.* § 44-1566.
88. ARK. CODE ANN. § 3-5-1107 (West, Westlaw through 2017 Reg. Sess. and 1st Extraordinary Sess.).
89. *Id.*
90. *Id.*
91. *Id.* §§ 3-5-1401–1416.

California

California state law requires exclusive territories filed with the state.[92] A brewery cannot terminate an agreement with a wholesaler solely for the wholesaler's "failure to meet a sales goal or quota that is not commercially reasonable under the prevailing market conditions."[93]

Colorado

Exclusive territories must be made in state-filed written agreements.[94] Immediate termination can occur upon failure to pay, insolvency, loss of license, or fraud.[95] Not-for-cause termination is possible, with ninety days' written notice.[96]

Connecticut

A brewery can terminate an agreement for just and sufficient cause, which is determined by the Connecticut Department of Consumer Protection.[97]

Delaware

Good cause is required for termination, and a brewery must provide a wholesaler ninety days' notice.[98]

Florida

Florida law allows for exclusive sales territories.[99] Ninety days' notice is required for termination, and the wholesaler is allowed thirty days to submit a corrective plan and ninety days to cure defects.[100] Good cause is required for terminating an agreement.[101] Good cause can include a violation of a reasonable and material term in the contract.[102] Termination with fifteen days' notice is only allowed in certain circumstances, such as insolvency, loss of license, fraud, and sales outside the territory.[103]

92. CAL. BUS. & PROF. CODE § 25000.5 (West, Westlaw through 2017. Sess.).
93. *Id.* § 25000.7.
94. COLO. REV. STAT. ANN. § 12-47-405 (West, Westlaw through 2017 Reg. Sess. and 1st Extraordinary Sess.).
95. *Id.* § 12-47-406.3.
96. *Id.*
97. CONN. GEN. STAT. ANN. § 30-17 (West, Westlaw through 2017 Sess.).
98. DEL. CODE ANN. tit. 6, §§ 2552, 2555 (West, Westlaw through 81 Laws 2017).
99. FLA. STAT. ANN. § 563.022 (West, Westlaw through 2017 1st Reg. Sess.).
100. *Id.*
101. *Id.*
102. *Id.*
103. *Id.*

Georgia

Georgia requires exclusive territories.[104] Acceptable justifications for termination include a wholesaler's financial instability, legal violations, or failure to maintain a reasonable sales volume.[105]

Hawaii

To date, Hawaii has no beer-franchise law.[106]

Idaho

Idaho law requires any territorial agreements to be filed with the state.[107] Twenty-four months' notice is required for termination, and thirty days are allowed to submit a plan of corrective action with an extra ninety days allowed to cure the defects.[108] Termination without this notice and a corrective-action period is only permitted upon the wholesaler's bankruptcy, conviction of a felony, loss of license, conducting sales outside the territory, transfer without consent, failure to pay, or fraud.[109]

Illinois

Illinois allows exclusive territories but requires them to be set forth in a written contract.[110] Ninety days' notice is required for termination of a contract with a wholesaler, with a period to cure defects granted to the wholesaler.[111] Immediate termination is permitted upon a wholesaler's insolvency, default on payments, conviction of serious crime, transfer of business without consent, loss of permit, or fraud related to dealing with the brewer.[112] A brewery can terminate a contract only for good cause and after good faith efforts have been made to resolve the problem.[113] Brewers may not discriminate among wholesalers when enforcing agreements.[114]

104. GA. CODE ANN. § 3-5-31 (West, Westlaw through 2017 Sess.).

105. GA. COMP. R. & REGS. 560-2-5.10 (West, Westlaw through 2017 amendments).

106. *See* Sorini, *supra* note 17, at 7.

107. IDAHO CODE ANN. § 23-1003 (West, Westlaw through 2017 1st Reg. Sess.).

108. *Id.* § 23-1107.

109. *Id.* § 23-1105.

110. 815 ILL. COMP. STAT. § 720/1.1 (West, Westlaw through P.A. 99-983 of the 2016 Reg. Sess.).

111. *Id.* § 720/3.

112. *Id.*

113. *Id.* § 720/4.

114. *Id.* § 720/5.

Indiana

Indiana law allows for exclusive territories but does not require them.[115] It also prohibits terminations made "unfairly" by either suppliers or wholesalers.[116] "Unfair" means terminations made without considering "the equities of the other party."[117]

Iowa

Iowa requires exclusive territories to be set out in a written contract.[118] Ninety days' notice is required for termination, and the wholesaler has thirty days to submit a plan to fix defects within ninety days.[119] Immediate termination is acceptable under certain circumstances, such as wholesaler insolvency or conviction of a crime that would harm its ability to sell beer.[120]

Kansas

All agreements must be in writing, including exclusive-territory agreements, which must also be filed with the state.[121] Reasonable cause is required for any termination, as is providing the agency thirty days' termination notice.[122]

Kentucky

Any designation of exclusive territories must be done in a written contract and filed with the state.[123] Termination can only be commenced with good cause and good faith and must be accompanied with written notice and a reasonable opportunity to cure defects.[124] Acceptable grounds for termination include insolvency, felony conviction, fraud, loss of license, outside territory sales, and change of ownership without consent.[125]

Louisiana

Louisiana law requires a written contract that designates a specific, exclusive sales territory.[126] Thirty days are required for

115. *See* IND. CODE ANN. § 7.1-3-2-7 (West, Westlaw through 2017 1st Reg. Sess.).
116. *Id.* § 7.1-5-5-9.
117. *See id.*
118. IOWA CODE ANN. § 123A.5 (West, Westlaw through 2017 Reg. Sess.).
119. *Id.* § 123A.3.
120. *Id.*
121. KAN. STAT. ANN. § 41-410 (West, Westlaw through 2017 Reg. Sess.).
122. *Id.*
123. KY. REV. STAT. ANN. § 244.585 (West, Westlaw through 2017 Reg. Sess.).
124. *Id.* § 244.606.
125. *Id.*
126. LA. STAT. ANN. § 26:802 (West, Westlaw through 2017 1st Extraordinary Sess.).

notice of termination, which will be ineffective if the wholesaler provides a plan to correct defects within that period and cures the problem within ninety days.[127]

Maine

Exclusive-territory agreements must be filed with the state.[128] Ninety days' notice is required for termination, with a reasonable time to cure defects.[129] Immediate termination is allowed only upon the wholesaler's bankruptcy, loss of license, or conviction of a serious crime.[130] Good cause is required for termination, but it does not include a change in wholesaler ownership.[131] Good cause can include loss of license, insolvency, or failure to substantially comply with reasonable and material agreement terms.[132]

Maryland

Maryland law allows for exclusive territories.[133] One-hundred-eighty days' notice is required for termination, but no notice is required for termination because of wholesaler bankruptcy.[134] All terminations must be for good cause, which always includes a wholesaler's loss of license.[135]

Massachusetts

One-hundred-twenty days' notice to the wholesaler and the state are required for termination.[136] Massachusetts only allows termination for good cause, which is limited to a wholesaler's disparagement of the brewer's product, unfair preference for a competing brand, failure to exercise best efforts, encouragement of improper trade practices, or failure to comply with the brewer-wholesaler contract.[137]

127. *Id.* § 26:805.
128. ME. REV. STAT. ANN. tit. 28-a, § 1453 (West, Westlaw through 2017 1st Reg. Sess.).
129. *Id.* § 1544.
130. *Id.*
131. *Id.* § 1454.
132. *Id.*
133. MD. CODE. ANN., ALCO. BEV., § 5-105 (West, Westlaw through 2017 Reg. Sess.).
134. *Id.* § 5-107.
135. *Id.* § 5-108.
136. *Id.*
137. *Id.*

Michigan

Michigan requires exclusive territories.[138] Written notice is required for termination, with thirty days given to the wholesaler to submit a corrective-action plan and ninety days to cure.[139] Fifteen days' notice is acceptable if the wholesaler commits fraud, sells outside the designated sales territory, or sells ineligible products.[140] A brewery can otherwise terminate an agreement for good cause.[141] Good cause exists if there is "a failure by the wholesaler to comply with a provision of the agreement which is both reasonable and of material significance to the business relationship between the wholesaler and the supplier."[142]

Minnesota

Minnesota law requires exclusive territories and requires ninety days' notice for terminating a franchise agreement.[143] Fifteen days' notice is acceptable if the wholesaler is bankrupt or insolvent, loses its license, or violates a significant law.[144] Termination must be for good cause, which does not include "the sale or purchase of a brewer."[145]

Mississippi

Mississippi requires exclusive territories and thirty days' notice for termination.[146] Termination must be in good faith and for good cause.[147] A brewery may immediately terminate a contract if (1) the wholesaler becomes insolvent; (2) the wholesaler has its license revoked or suspended; (3) the wholesaler, a partner, or an investor is convicted of a felony or a law reasonably affecting the good will of the wholesaler or brewery; or (4) the brewery proves the wholesaler committed fraud.[148] Good cause is established when "the wholesaler

138. MICH. COMP. LAWS. ANN. § 436.1401 (West, Westlaw through 2017 Reg. Sess.).
139. *Id.* § 436.1403.
140. *Id.*
141. *Id.*
142. *Id.*
143. MINN. STAT. §§ 325B.03, 325B.05 (2017).
144. *Id.* § 325B.05, subdiv. 2.
145. *Id.* § 325B.04.
146. MISS. CODE ANN. §§ 67-7-5, 67-7-7(1) (West, Westlaw through 2017 Reg. Sess. and 1st Extraordinary Sess.).
147. *Id.* § 67-7-11(1).
148. *Id.* § 67-7-11(5).

fails to comply with reasonable and material [terms] of the [contract]."[149]

Missouri

Missouri law requires a written agreement and, unless the agreement says otherwise, exclusive territories.[150] Before terminating an agreement, a brewery must provide a wholesaler at least ninety days' notice, and a wholesaler has sixty days to cure. [151] A brewery must have good cause to terminate an agreement.[152]

Montana

Montana law requires written contracts filed with the state and exclusive territories.[153] Sixty days' notice is required for termination, and termination must be for just cause or in accordance with the contract's terms.[154]

Nebraska

Nebraska law requires exclusive territories and a written agreement filed with the state.[155] Thirty days' notice is necessary for termination, which must be done for good cause.[156] Nebraska law also provides wholesalers thirty days to submit a plan of corrective action and ninety days to cure.[157]

Nevada

Nevada law provides that "[u]nless otherwise specified by contract between the supplier and wholesaler, a supplier shall not grant more than one franchise to a wholesaler for any brand of alcoholic beverage in a marketing area."[158] Ninety days' notice is required for termination, which must be for good cause.[159]

149. *Id.*
150. MO. ANN. STAT. §§ 311.181, 407.413 (West, Westlaw through 2017 Sess.).
151. *Id.* § 407.753.
152. *Id.*
153. MONT. CODE ANN. § 16-3-222, 226 (West, Westlaw through 2017 Sess.).
154. *Id.* §§ 16-3-221, 222.
155. NEB. REV. STAT. ANN. § 53-218 (West, Westlaw through 2017 1st Reg. Sess.).
156. *Id.*
157. *Id.*
158. NEV. REV. STAT. § 597.160(4) (West, Westlaw through 2017 Reg. Sess.).
159. *Id.* §§ 597.155(1), 597.160(4).

New Hampshire

New Hampshire law requires exclusive territories.[160] Ninety days' notice is required for termination, which can be made only with good cause.[161]

New Jersey

New Jersey law requires exclusive territories.[162] A written or oral agreement is required, as is written notice for termination with 120 days to cure defects.[163] All terminations require good cause to be shown.[164]

New Mexico

New Mexico allows for exclusive territories and directs that breweries file a written agreement with the state.[165] Terminations must be done in good faith with good cause.[166]

New York

New York law requires written agreements, and termination for cause must be made by written notice.[167] Wholesalers are "afforded fifteen days after receipt of such notice to submit a written plan of corrective action to comply with the agreement by curing the claimed non-compliance and seventy-five days to cure such non-compliance."[168] Terminations can be made only with good cause.[169]

North Carolina

North Carolina provides for exclusive territories, and such agreements must be written and filed with the state.[170] Ninety days' notice is required for terminations, with forty-five days given to the wholesaler to cure a defect.[171] Terminations require good cause.[172]

160. N.H. REV. STAT. ANN. § 180:9 (Westlaw through 2017 Reg. Sess.).
161. *Id.* §§ 180:3, 180:4.
162. N.J. STAT. ANN. § 33:1-93.15(4)(c)(7) (West, Westlaw through L. 2017, ch. 245 and J.R. No. 19).
163. *Id.* §§ 33:1-93.15, 33:1-93.16.
164. *Id.* § 33:1-93.16.
165. N.M. STAT. ANN. § 60-8A-2 (West, Westlaw through 2017).
166. *Id.* § 60-8A-8(B).
167. N.Y. ALCO. BEV. CONT. LAW § 55-c(3)–(4) (McKinney, Westlaw through 2017).
168. *Id.* § 55-c(2)(e)(ii).
169. *Id.* § 55-c(4).
170. N.C. GEN. STAT. ANN. § 18B-1303 (West, Westlaw through 2017 Reg. Sess.).
171. *Id.* § 18B-1305(b).
172. *Id.* § 18B-1305(a).

North Dakota

North Dakota law requires exclusive territories and ninety days' notice for termination.[173] All terminations must be for good cause.[174]

Ohio

Ohio requires exclusive territories, and agreements must be in writing.[175] State law provides that sixty days' notice be given for termination, which must be done for just cause.[176] The law also mandates that the wholesaler act in good faith and "maintain adequate physical facilities and personnel so that the product or brands of the manufacturer are at all times properly represented in the sales area of the distributor, the reputation and trade name of the manufacturer are protected, and the general public receives adequate servicing."[177]

Oklahoma

Oklahoma's franchise law only applies to "low point beer," and protections do not extend to suppliers producing less than 300,000 gallons of beer per year.[178] Written agreements that designate exclusive territories are required.[179] Terminations require good cause and written notice with sixty days to cure defects.[180]

Oregon

Oregon requires exclusive territories to be designated in written agreements filed with the state.[181] Oregon law mandates ninety days' notice for termination, as well as good cause and acting in good faith on the part of the brewer.[182]

Pennsylvania

Pennsylvania exempts brewers if they do not designate a distributor as a primary or original supplier and had not done so

173. N.D. CENT. CODE ANN. §§ 5-04-03, 05 (West, Westlaw through 2017 Reg. Sess.).

174. *Id.* § 5-04-04.

175. OHIO REV. CODE ANN. § 1333.83 (West, Westlaw through 2017 File 41 and 2017 State Issue 1).

176. *Id.* § 1333.85.

177. *Id.* § 1333.86.

178. OKLA. STAT. ANN. tit. 37, § 163.1 (West, Westlaw through 2017 Reg. Sess. and 1st Spec. Sess.).

179. *Id.* § 163.18D.

180. *Id.* § 163.18E.

181. OR. REV. STAT. ANN. § 474.007 (West, Westlaw through 2017 Reg. Sess.).

182. *Id.* § 474.011.

before 1980.[183] State law requires a written agreement filed with the state and exclusive territories.[184] It also requires ninety days' notice and good cause for any terminations.[185]

Rhode Island

Rhode Island law holds that brewers are not considered suppliers and are therefore exempt from franchise-law requirements.[186] Applicable requirements include a written contract, exclusive territories, and ninety days' notice and just cause for terminations.[187]

South Carolina

South Carolina requires exclusive territories to be designated in writing and filed with the state, and the state also requires sixty days' notice for terminations.[188] If either party moves to terminate, termination must be fair and for just provocation.[189]

South Dakota

South Dakota law mandates exclusive territories designated in writing.[190] Written notice is required for termination, and the notice must give at least thirty days for the wholesaler to create a plan to cure defects.[191] Terminations must be for good cause and done in good faith.[192]

Tennessee

Tennessee requires exclusive territories for each brand.[193] Terminations must be accompanied with ninety days' notice to the wholesaler and thirty days' notice for the wholesaler to submit a plan to cure defects.[194] Terminations must be done in good faith and for good cause.[195]

183. 47 PA. STAT. AND CONS. STAT. ANN. § 4-431(d)(2) (West, Westlaw through 2017 Reg. Sess.).

184. *Id.* § 4-492(19).

185. *Id.*

186. 3 R.I. GEN. LAWS ANN. § 3-13-1(5) (West, Westlaw through ch. 480 of Jan. 2017 Sess.).

187. *Id.* § 3-13-3.

188. S.C. CODE ANN. §§ 61-4-1100, 61-4-1300 (Westlaw through 2017 Sess.).

189. *Id.* § 61-4-1100.

190. S.D. CODIFIED LAWS § 35-8A-14 (Westlaw through 2017 Sess.).

191. *Id.* § 35-8A-8.

192. *Id.*

193. TENN. CODE ANN. § 57-6-104 (West, Westlaw through 2017 1st Reg. Sess.).

194. *Id.* § 57-5-507.

195. *Id.*

Texas

Texas requires a written contract designating exclusive territories to be filed with the state.[196] Terminations must be given with ninety days' notice and for good cause.[197]

Utah

Utah law exempts small brewers who produce less than 60,000 barrels a year.[198] It requires that exclusive territories be designated in a written agreement filed with the state.[199] Terminations of the contracts must have ninety days' notice and must be done with good cause by either the brewer or the wholesaler.[200]

Vermont

Vermont requires exclusive territories.[201] Termination requires 120 days' notice and good cause, and wholesalers have "have 120 days . . . to rectify any claimed deficiency."[202]

Virginia

Virginia law mandates exclusive territories and requires breweries to "notify the Board in writing of all designations of sales territories, the identity of the wholesaler appointed to serve such territory and a statement of any variations which exist in such designated territory with regard to a particular brand."[203] To terminate, cancel, or renew an agreement between a brewery and wholesaler, a brewery must "provide a wholesaler at least ninety days' prior written notice."[204] Breweries cannot cancel or terminate an agreement unless good cause exists.[205] Wholesalers have sixty days to rectify the underlying problem or problems.[206]

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196. TEX. ALCO. BEV. CODE ANN. § 102.51 (West, Westlaw through 2017 Reg. Sess.).
197. *Id.* §§ 102.73, 102.74.
198. UTAH CODE ANN. §§ 32B-1-102(105), 32B-11-503(d) (West, Westlaw through 2017 1st Spec. Sess.).
199. *Id.* § 32B-11-201(6)(b).
200. *Id.* §§ 32B-14-201(2)(a), 32B-14-202(2)(a).
201. VT. STAT. ANN. tit. 7, § 705 (West, Westlaw through 2017-2018 1st Sess.).
202. *Id.* § 704(a)(1)–(2).
203. VA. CODE ANN. § 4.1-503 (West, Westlaw through 2017 Reg. Sess.).
204. *Id.* § 4.1-506(A).
205. *Id.* §§ 4.1-505, 4.1-506(B).
206. *Id.* § 4.1-506(B).

Washington

Washington franchise laws do not cover certain suppliers who produce less than 200,000 barrels per year.[207] The state requires a written contract and sixty days' notice to the wholesaler for termination.[208] The wholesaler is required to give the brewer ninety days' notice of termination.[209]

West Virginia

West Virginia requires a written agreement designating exclusive territories to be filed with the state.[210] Terminations must be accompanied with ninety days' notice and be initiated with just cause.[211]

Wisconsin

Wisconsin requires parties to share a "community of interest" before the "dealership" law applies.[212] If the dealership provisions do not apply, the statute specifies the compensation due under certain wholesaler terminations.[213] The state requires written contracts and exclusive territories to be designated in those contracts.[214] Ninety days' notice of termination of contracts must be given, and termination must be commenced with good cause.[215]

Wyoming

Wyoming statute mandates exclusive-territory agreements filed with the state and thirty days' notice for any terminations.[216] All terminations must be made in good faith and with good cause.[217]

207. WASH. REV. CODE ANN. § 19.126.020(10) (West, Westlaw through 2017 3rd Spec. Sess.) (definition of supplier excludes smaller breweries).

208. *Id.* § 19.126.040.

209. *Id.* § 19.126.030.

210. W. VA. CODE ANN. § 11-16-21 (West, Westlaw through 2017 3d Extraordinary Sess.).

211. *Id.*

212. WIS. STAT. ANN. § 135.02 (West, Westlaw through 2017 Act 135).

213. *Id.* § 125.33.

214. *Id.* § 125.34.

215. *Id.* § 135.04.

216. WYO. STAT. ANN. §§ 12-2-201, 12-9-106 (West, Westlaw through 2017 Gen. Sess.).

217. *Id.* § 12-9-106.

Mitchell Hamline Law Review