

§ 18B-1305. Cause for termination of franchise agreement.

(a) Meaning of Good Cause. – Good cause for altering or terminating a franchise agreement, or failing to renew or causing a wholesaler to resign from such an agreement, exists when the wholesaler fails to comply with provisions of the agreement which are reasonable, material, not unconscionable, and which are not discriminatory when compared with the provisions imposed, by their terms or in the manner of enforcement, on other similarly situated wholesaler by the supplier. The meaning of good cause set out in this section may not be modified or superseded by provisions in a written franchise agreement prepared by a supplier if those provisions purport to define good cause in a manner different than specified in this section. In any dispute over alteration, termination, failure to renew or causing a wholesaler to resign from a franchise agreement, the burden is on the supplier to establish that good cause exists for the action.

(a1) Termination by a Small Brewery. – A brewery's authorization to distribute its own malt beverage products pursuant to G.S. 18B-1104(8) shall revert back to the brewery, in the absence of good cause, following the fifth business day after confirmed receipt of written notice of such reversion by the brewery to the wholesaler. The brewery shall pay the wholesaler fair market value for the distribution rights for the affected brand. For purposes of this subsection, "fair market value" means the highest dollar amount at which a seller would be willing to sell and a buyer willing to buy at the time the self-distribution rights revert back to the brewery, after each party has been provided all information relevant to the transaction.

(b) Notice of Cause. – At least 90 days before altering, terminating or failing to renew a franchise agreement for good cause, the supplier must give the wholesaler written notice of the intended action and the specific reasons for it. If the cause for the alteration, termination or failure to renew is subject to correction by the wholesaler, and the wholesaler makes such correction within 45 days of receipt of the notice, the notice shall be void.

(c) Termination for Cause without Advance Notice. – A supplier may terminate or fail to renew a franchise agreement for any of the following reasons, and the termination shall be complete upon receipt by the wholesaler of a written notice of the termination and the reason:

- (1) Insolvency of the wholesaler, the dissolution or liquidation of the wholesaler, or the filing of any petition by or against the wholesaler under any bankruptcy or receivership law which materially affects the wholesaler's ability to remain in business.
- (2) Revocation of the wholesaler's State or federal permit or license for more than 30 days.
- (3) Conviction of the wholesaler, or of a partner or individual who owns ten percent (10%) or more of the partnership or stock of the wholesaler, of a felony which might reasonably be expected to adversely affect the goodwill or interest of the wholesaler or supplier. The provisions of this subdivision shall not apply, however, if the wholesaler or its existing partners or stockholders shall have the right to purchase the interest of the offending partner or stockholder, and such purchase is completed within 30 days of the conviction.
- (4) Fraudulent conduct by the wholesaler in its dealings with the supplier or its products.
- (5) Failure of the wholesaler to pay for the supplier's products according to the established terms of the supplier.
- (6) Assignment, sale or transfer of the wholesaler's business or control of the wholesaler without the written consent of the supplier, except as provided in G.S. 18B-1307.

(d) Absence of Good Cause. – Good cause for alteration, termination or failure to renew a franchise agreement does not include:

- (1) The failure or refusal of the wholesaler to engage in any trade practice, conduct or activity which would violate federal or State law.
- (2) The failure or refusal of the wholesaler to take any action which would be contrary to the provisions of this Article.
- (3) A change in the ownership of the supplier or the acquisition by another supplier of the brewery, brand or trade name or trademark, or acquisition of the right to distribute a product, from the original supplier.
- (4) Sale or transfer of the rights to manufacture, distribute, or use the trade name of the brand to a successor supplier.
- (5) Failure of the wholesaler to meet standards of operation or performance that have been imposed or revised unilaterally by the supplier without a fair opportunity for the individual wholesaler to bargain as to the terms, unless the supplier has implemented the standards on a national basis and those standards are consistently applied to all similarly situated North Carolina wholesalers in a nondiscriminatory manner.
- (6) The establishment of a franchise agreement between a wholesaler and another supplier, or similar acquisition by a wholesaler of the right to distribute a brand of another supplier.
- (7) The desire of a supplier to consolidate its franchises. (1989, c. 142, s. 1; 2012-4, s. 1; 2012-194, s. 45.5.)