

IC 7.1-3-25

Chapter 25. Product Transfer Between Wholesalers

IC 7.1-3-25-1

"Existing wholesaler"

Sec. 1. As used in this chapter, "existing wholesaler" means a beer wholesaler who distributes a product at the time a successor primary source of supply acquires rights to a product under section 5 of this chapter.

As added by P.L.224-2005, SEC.19.

IC 7.1-3-25-2

"Product"

Sec. 2. As used in this chapter, "product" means an existing brand of:

- (1) beer (as defined in IC 7.1-1-3-6); or
- (2) flavored malt beverage (as defined in IC 7.1-1-3-16.7).

As added by P.L.224-2005, SEC.19.

IC 7.1-3-25-3

"Successor"

Sec. 3. As used in this chapter, "successor" means a primary source of supply that acquires rights to a product under section 5 of this chapter.

As added by P.L.224-2005, SEC.19.

IC 7.1-3-25-4

"Successor's designee"

Sec. 4. As used in this chapter, "successor's designee" means one (1) or more beer wholesalers designated by a successor to replace the existing wholesaler, for all or part of the existing wholesaler's territory, in the distribution of the existing product.

As added by P.L.224-2005, SEC.19.

IC 7.1-3-25-4.5

Transfer of products meeting sales percentage threshold prohibited

Sec. 4.5. (a) Except as provided in subsection (b), a successor, upon acquiring products, shall:

- (1) reappoint the existing wholesaler for:
 - (A) all acquired products; and
 - (B) the territories covered by the existing wholesaler for the products; or
- (2) comply with this chapter to transfer the products to another wholesaler.

(b) If the products acquired by a successor represent at least fifteen percent (15%) of an existing wholesaler's dollar sales in the twelve (12) months preceding the closing of the transaction in which the successor acquires the products, the successor:

- (1) shall reappoint the existing wholesaler for:

- (A) all acquired products; and
 - (B) the territories covered by the existing wholesaler for the products; and
 - (2) may not transfer the product to another wholesaler.
- As added by P.L.11-2009, SEC.1.*

IC 7.1-3-25-5

Successor requirements

Sec. 5. A successor:

- (1) who acquires the rights to manufacture or distribute an existing product; and
- (2) who:
 - (A) does not reappoint the existing wholesaler to distribute the product;
 - (B) reduces the existing wholesaler's territory for the product; or
 - (C) offers to compensate the existing wholesaler in an amount less than the fair market value determined under section 7 of this chapter;

must comply with this chapter. A successor's designee must also comply with this chapter.

As added by P.L.224-2005, SEC.19.

IC 7.1-3-25-6

Notice to wholesaler of change in territory

Sec. 6. The successor shall notify the existing wholesaler of the successor's intent not to appoint the existing wholesaler for all or a part of the existing wholesaler's territory for the product not later than sixty (60) days after the closing of the transaction in which the successor acquires the product. The successor shall mail the notice by certified mail, return receipt requested, to the existing wholesaler. The successor shall include in the notice the names, addresses, and telephone numbers of the successor's designees.

As added by P.L.224-2005, SEC.19. Amended by P.L.11-2009, SEC.2.

IC 7.1-3-25-7

Determination of fair market value of wholesaler's distribution rights

Sec. 7. A successor's designee shall negotiate with the existing wholesaler to determine the fair market value of the existing wholesaler's right:

- (1) to distribute the product in the existing wholesaler's territory immediately before the successor acquired rights to the product under section 5 of this chapter; and
- (2) as determined in an arms length transaction entered into without duress or threat of termination of the initial wholesaler's right described in subdivision (1).

As added by P.L.224-2005, SEC.19.

IC 7.1-3-25-8**Territory continues until compensation received**

Sec. 8. The existing wholesaler shall continue to distribute the product until payment of the compensation agreed to under section 7 of this chapter or awarded under section 11 of this chapter is received.

As added by P.L.224-2005, SEC.19.

IC 7.1-3-25-9**Arbitration**

Sec. 9. (a) The successor's designee and the existing wholesaler shall negotiate in good faith. If the parties fail to reach an agreement not later than thirty (30) days after the existing wholesaler receives the notice under section 6 of this chapter, the successor's designee or the existing wholesaler may send a written notice to the:

- (1) other party; and
- (2) American Arbitration Association or its successor in interest;

declaring the party's intention to proceed with final and binding arbitration administered by the American Arbitration Association under the American Arbitration Association's Commercial Arbitration Rules.

(b) Notice of intent to arbitrate shall be sent, as provided in subsection (a), not later than thirty-five (35) days after the existing wholesaler receives notice under section 6 of this chapter. The arbitration proceedings shall conclude not later than forty-five (45) days after the date the notice of intent to arbitrate is mailed to a party.

As added by P.L.224-2005, SEC.19.

IC 7.1-3-25-10**Location of arbitration proceedings; general provisions**

Sec. 10. (a) The arbitration shall be conducted in the city within Indiana that:

- (1) is closest to the existing wholesaler; and
- (2) has a population of more than fifty thousand (50,000).

(b) The arbitration shall be conducted before one (1) impartial arbitrator to be selected by the American Arbitration Association. The arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association.

As added by P.L.224-2005, SEC.19.

IC 7.1-3-25-11**Monetary award only**

Sec. 11. The arbitrator's award must be monetary only and may not enjoin or compel conduct. The arbitration is instead of all other remedies and procedures.

As added by P.L.224-2005, SEC.19.

IC 7.1-3-25-12

Arbitration costs; decision of arbitrator binding

Sec. 12. (a) The cost of the arbitrator and any other direct costs of the arbitration shall be equally divided by the parties engaged in the arbitration. All other costs shall be paid by the party incurring them.

(b) The arbitrator shall render a decision not later than thirty (30) days after the conclusion of the arbitration unless this time period is extended by mutual agreement of the parties or by the arbitrator. The decision of the arbitration is final and binding on the parties. Under no circumstances may the parties appeal the decision of the arbitrator.

(c) 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.
As added by P.L.224-2005, SEC.19.

IC 7.1-3-25-13

Failure to receive compensation

Sec. 13. If the existing wholesaler does not receive payment of the compensation under section 7 or 11 of this chapter not later than thirty (30) days after the date of the settlement or arbitration award:

- (1) the existing wholesaler shall remain the distributor of the product in the existing wholesaler's territory to at least the same extent that the existing wholesaler distributed the product immediately before the successor acquired rights to the product; and
- (2) the existing wholesaler is not entitled to the settlement or arbitration award.

As added by P.L.224-2005, SEC.19.

IC 7.1-3-25-14

Good faith settlements not prohibited

Sec. 14. Nothing in this chapter shall be construed to limit or prohibit good faith settlements voluntarily entered into by the parties.
As added by P.L.224-2005, SEC.19.

IC 7.1-3-25-15

Not applicable to wholesaler's breach of distribution agreement

Sec. 15. Nothing in this chapter shall be construed to give the existing wholesaler or a successor wholesaler any right to compensation if the existing wholesaler or successor wholesaler is terminated by the primary source of supply or predecessor source supplier either for failure to comply with any provision in the agreement to distribute the product or in accordance with IC 7.1-5-5-9.

As added by P.L.224-2005, SEC.19.