



## Ohio Revised Code

### Section 1333.851 Distributors of acquired manufacturers.

Effective: December 30, 2008

Legislation: Senate Bill 320, House Bill 420 - 127th General Assembly

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(A) With respect to any merger, acquisition, purchase, or assignment under division (D) of section 1333.85 of the Revised Code, both of the following apply:

(1) The territories for the particular product or brand of alcoholic beverage shall not be assigned to another distributor until the successor manufacturer compensates the terminated or nonrenewed distributor for the diminished value of the distributor's business.

(2) When a distributor receives written notice of termination or nonrenewal of its franchise pursuant to division (D) of section 1333.85 of the Revised Code, the distribution of beer or wine for ninety days or more without a written contract shall not constitute a franchise relationship between the successor manufacturer and the distributor under section 1333.83 of the Revised Code.

(B) With respect to the merger, acquisition, or purchase of a manufacturer by a successor manufacturer or the purchase or assignment of a product or brand to a successor manufacturer under division (D) of section 1333.85 of the Revised Code, all of the following apply:

(1) Except as otherwise provided in division (B)(2) of this section, within seventy-five days after a distributor receives written notice of termination or nonrenewal of its franchise pursuant to division (D) of section 1333.85 of the Revised Code, the distributor shall provide the successor manufacturer with the three previous years of financial statements and other relevant and reasonably necessary financial information regarding the diminished value of the distributor's business. The distributor and successor manufacturer shall negotiate in good faith to determine the diminished value of the distributor's business, and the successor manufacturer shall pay the distributor for that diminished value.

(2) If the distributor and successor manufacturer are unable to negotiate in good faith or are unable to resolve the distributor's diminished value within ninety days of the date that notice of termination is given, either party may bring an action in the court of common pleas of the county in which the



distributor's principal place of business in this state is located within ninety days of the date that notice of termination is given, except that the parties may mutually agree in writing to extend that ninety-day period.

(3) The court of common pleas shall determine the diminished value of the distributor's business within ninety days after the action is filed. The successor manufacturer shall pay the distributor the amount of diminished value the court determines. Upon payment of that amount by the manufacturer to the distributor, the successor manufacturer may transfer the brands to a new distributor.

(4) Either party may appeal the decision of the court of common pleas to the court of appeals. The filing of an appeal does not stay the successor manufacturer's payment of diminished value to the distributor or the successor manufacturer's transfer of brands to a new distributor.

(5) If the court is unable to determine the diminished value of the distributor's business within ninety days after the action is filed, the court shall order the successor manufacturer to pay its last good faith offer to the distributor on the ninety-first day after the action is filed and shall treat the manufacturer's application for that order as a request for emergency injunctive relief without the need for any showing of irreparable harm. Upon payment of the amount of its last good faith offer to the distributor, the successor manufacturer may transfer the brands to a new distributor. After the successor manufacturer's payment of that amount to the distributor and its transfer of the brands, the court shall determine the diminished value of the distributor's business. The successor manufacturer shall pay the distributor the amount of the diminished value determined by the court less the amount of its last good faith offer previously paid pursuant to division (B)(5) of this section.

(6) The parties by mutual agreement may extend or shorten any of the time deadlines set forth in this section.

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*The Legislative Service Commission presents the text of this section as a composite of the section as amended by multiple acts of the General Assembly. This presentation recognizes the principle stated in R.C. 1.52(B) that amendments are to be harmonized if reasonably capable of simultaneous operation.*