Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Commerce & Labor Committee

HB 1441

Brief Description: Concerning the contractual relationships between distributors and producers of malt beverages.

Sponsors: Representatives Conway, Condotta, Armstrong, White and Eddy.

Brief Summary of Bill

- Requires successor distributors of malt beverages to compensate distributors whose rights to distribute a brand have been terminated, cancelled, or not renewed.
- Makes other changes in the law regulating malt beverage suppliers and distributors.

Hearing Date: 2/6/09

Staff: Joan Elgee (786-7106)

Background:

Distributors and suppliers of malt beverages are regulated under both state liquor laws and the Wholesale Distributor/Supplier Equity Agreement Act (Act). The Act regulates the relationship between malt beverage suppliers and distributors. Under the Act, suppliers and distributors are entitled to certain protections which must be incorporated into agreements of distributorship. Agreements must be in writing. A supplier is any malt beverage importer or manufacturer who produces 50,000 or more barrels annually.

The Act sets forth specific processes for terminating or cancelling agreements, requires compensation when agreements are terminated or cancelled, and delineates reasons for termination or cancellation that do not require compensation.

Cancellation or termination of the agreement. A supplier must give 60 days notice of cancellation or termination to a distributor and give the distributor time to cure any claimed deficiency. The 60-day notice and time to cure requirement does not apply if the termination or cancellation is due to one of several reasons specified, including insolvency, bankruptcy, and liquor license suspension or revocation.

Compensation requirement. A supplier who terminates an agreement with a distributor must compensate the distributor unless the termination was: (1) for cause; (2) for failure to live up to the terms and conditions of the agreement; or (3) for one of the several reasons specified, which include insolvency, bankruptcy, and liquor license suspension or revocation.

Measure of compensation. If compensation is due, a distributor is entitled to the laid-in cost of inventory and liquidated damages measured on the fair market price of the business.

Summary of Bill:

Intent language is added providing that the preservation of three viable, independent tiers of entities involved in the distribution and sale of malt beverages and wine in the State of Washington is necessary to facilitate orderly marketing of alcohol, encourage moderation in the consumption of alcohol, protect the public interest in limiting consumption by minors and limiting abusive consumption, and facilitate the collection of taxes.

The production threshold for excluding malt liquor manufacturers from the definition of "supplier" is changed from 50,000 barrels annually to 200,000 barrels annually.

Cancellation or Termination of Agreement. Two additional reasons for cancellation or termination without notice are provided, one which requires compensation and one that does not. A supplier may cancel or terminate an agreement without notice and without compensating the distributor if there is fraudulent conduct in any of the distributor's dealings with the supplier or its products. A supplier may also terminate the agreement without notice if the termination results from a supplier acquiring the right to manufacture or distribute a particular brand and opting to have that brand distributed by a different distributor. In the latter case, compensation is required. Termination, cancellation, or nonrenewal of a distributor's right to distribute a particular brand by a supplier is termination, cancellation, or nonrenewal of the entire agreement of distributorship, regardless of whether the distributor retains the right to distribute other brands for the supplier.

Compensation requirement. Actions taken by the supplier that require compensation include nonrenewal and cancellation of the agreement as well as termination. The "for cause" provision disqualifying the distributor from compensation when a suppler terminates an agreement is removed. When an agreement is terminated, cancelled, or not renewed for any reason other than failure to live up to the terms and conditions of the agreement, insolvency, bankruptcy, or liquor license suspension or revocation, or other reason specified in statue, the successor distributor must compensate the distributor. When termination results from a supplier acquiring the right to manufacture or distribute a brand and electing to have that brand handled by a different distributor, the distribution rights do not transfer until the compensation to be paid has been finally determined.

Measure of compensation. The successor distributor must compensate the terminated distributor for the fair market value of the right to distribute the brand, less any amount paid by a supplier or other person with respect to the termination. Fair market value is the amount a buyer would pay a seller for the distribution rights and is determined using the date the distribution rights are to be transferred. Provision is made for compensation when the distribution rights are divided among two or more successor distributors. If the terminated and successor distributors do not agree on the fair market value, the matter must be resolved by arbitration.

Definitions. Definitions are added for "terminated distributor," "successor distributor," and "brand." A terminated distributor is a distributor whose agreement of distributorship has been terminated, cancelled, or not renewed. A successor distributor is a distributor who enters into an agreement with a supplier who terminated, cancelled, or failed to renew an agreement with a previous distributor to distribute the same brand of malt beverages. Brand means any word, name, group of letters, or symbol adopted and used by a supplier to identify a specific malt beverage product and to distinguish that product from other malt beverages.

General. Rather than requiring that specific protections be incorporated into agreements of distributorships, the protections are deemed to be incorporated. The protections are incorporated into oral, as well as written, agreements. If there is a material change in an agreement, the revised agreement is considered to be a new agreement when determining the law applicable to the agreement. A prevailing party in any arbitration is entitled to reasonable attorney's fees and costs. A person seeking a determination of compensation due a terminated distributor may not bring a civil action in court.

Rules Authority: The bill does not address the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.