HOUSE BILL REPORT
HB 1441

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to the contractual relationships between distributors and producers of malt beverages.

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

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

Brief History:
Committee Activity:
Commerce & Labor: 2/6/09, 2/20/09 [DPS].

Brief Summary of Substitute 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.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Crouse, Green, Moeller and Williams.

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 distributorship

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agreements. 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 Substitute Bill:

The production threshold for excluding malt liquor manufacturers from the definition of "supplier" subject to the Act 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. When an agreement is terminated, cancelled, or not renewed for any reason other than for cause, 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 statute, 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. A 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," "terminated distributor rights," and "brand."

General. Rather than requiring that specific protections be incorporated into agreements of distributorships, the protections are deemed to be incorporated. 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 an arbitration other than an arbitration to determine compensation due to a terminated distributor is entitled to reasonable attorneys' fees and costs. A person seeking a determination of compensation due a terminated distributor may not bring a civil action in court.

Substitute Bill Compared to Original Bill:

Language added to the intent section in current law is deleted. A definition of "terminated distribution rights" is added. The provision on compensation when distribution rights are divided among two or more successor distributors is modified and a provision is added that nothing requires the supplier or other third person to make any payment to a terminated distributor. The right to attorneys' fees and costs is modified. Termination "for cause" is added to the list of circumstances in which no compensation is owed.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This bill updates the law to current conditions in the malt beverage industry and is critical to our survival. International and national consolidations have put the distributor tier in jeopardy. These are good family Teamster jobs. Other states have enacted these changes. The bill does not impact the great majority of craft breweries in the country.

It is important to reaffirm the value of the three tier system but the intent language may end up only in the Joint Select Committee bill. A public policy reason for interfering with a contractual relationship is important if the bill were ever subject to challenge.

We are close to agreement on some technical amendments.

(With concerns) The intent language does not belong in this bill. An example of the concern with the intent section is that a microbrewery cannot get a distributor license if it has a restaurant on the premises. Small changes are needed in the intent language to reflect modernization because some overlap of the tiers is allowed. There are ongoing discussions to get the bill right.

The intent language is appropriate in the Joint Select Committee bill. Otherwise, it would need to go into every beer and wine bill.

(Opposed) None.

Persons Testifying: (In support) Representative Condotta; Ron Main, Fred Bevegni, and John Guadnola, Washington Beer and Wine Wholesalers.

(With concerns) Rick Garza, Washington State Liquor Control Board; Steve Gano, Miller Coors; Holly Chisa, Northwest Grocery Association; T.K. Bentler, Washington Brewers Guild; and Michael Transue, Washington Restaurant Association.

Persons Signed In To Testify But Not Testifying: None.