SENATE BILL REPORT
SB 5403

As of February 2, 2009

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: Senators Keiser, Hewitt, Honeyford, Franklin and Kohl-Welles.

Brief History:
Committee Activity: Labor, Commerce & Consumer Protection: 1/29/09.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Staff: Mac Nicholson (786-7445)

Background: Distributors and suppliers of malt beverages are regulated under both state liquor laws and Chapter 19.126 RCW. State liquor laws regulate the general production, distribution, sale, and consumption of alcohol in the state, whereas Chapter 19.126 RCW regulates the specific relationship between malt beverage producers, or suppliers, and distributors.

Under Chapter 19.126 RCW, suppliers and distributors are entitled to certain protections which must be incorporated into written agreements of distributorship. A supplier is defined as any malt beverage importer or manufacturer who produces more than 50,000 barrels annually. Current law lists specific processes for terminating or cancelling agreements, establishes compensation entitlements when agreements are terminated or cancelled, and delineates reasons for termination or cancellation that would not trigger compensation entitlements.

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 supplier can dispense with the 60 day notice and cure provision if the termination or cancellation is due to one of the reasons specified in statute, including insolvency, bankruptcy, and license suspension or revocation.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Compensation Entitlements. A supplier who cancels or terminates an agreement with a distributor must compensate the distributor unless the cancellation or 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 reasons specified in statute, which include insolvency, bankruptcy, and license suspension or revocation.

Type of Compensation. A distributor entitled to compensation from a supplier is entitled to the laid-in cost of inventory and liquidated damages. Liquidated damages refers to the amount of money agreed to by the parties in the agreement that is paid to one party or the other when the agreement is breached.

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.

Definitions. New terms are defined, including 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.

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 triggers compensation entitlements and one that does not. A supplier can cancel or terminate the agreement without notice and without triggering the compensation entitlement if there is fraudulent conduct in any of the distributor's dealings with the supplier or its products. A supplier can cancel or 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 such cases, the termination would trigger the compensation entitlement.

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.

If a supplier terminates an agreement because the supplier acquired the right to brew or distribute a particular brand and elects to have that brand handled by a different distributor, the distribution rights will not transfer until the terminated distributor has been compensated, either by agreement of the parties or by arbitration.

Compensation Entitlements. Actions taken by the supplier that trigger distributor compensation entitlements are changed to include nonrenewal of the agreement as well as cancellation and termination.

The "for cause" provision disqualifying the distributor from compensation when a suppler cancels or terminates an agreement is removed.

When a terminated distributor is entitled to compensation, any successor distributor must compensate the terminated distributor for the fair market value of the distribution rights, less any amount paid by the supplier. If the terminated distributor and the successor distributor can't agree on fair market value within 30 days, the issue must be submitted to binding arbitration.

Type of Compensation. Part of the compensation a distributor is entitled to for cancellation, termination, or nonrenewal of an agreement is changed from liquidated damages to the fair market value of the terminated distribution rights. 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.

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 will be considered a new agreement when determining the law applicable to the agreement.

A prevailing party in any arbitration 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.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: It's not always an even playing field when distributors negotiate against large multi-national beer manufacturing or importing corporations. The state Franchise Act works well to protect distributors, and this bill strengthens the Franchise Act and adapts it to current market conditions on the supplier level as manufacturers and importers consolidate on an international level. The bill protects the investments made by distributors over many years. The bill helps keep the marketplace stable and regulated. Craft brewing is not affected by the legislation. Language should be included that reflects importance of a strong distribution tier in the state's three-tiered system.

CON: The intent language should be stricken from the bill.

OTHER: The intent section of the legislation is problematic. The intent language sets a precedent and it should be part of a larger dialogue among all involved. The intent section isn't necessary to implement the bill. Distributors are valued, and suppliers just want to be sure that the bill adequately and accurately preserves all interests.

Persons Testifying: PRO: Ron Main, John Guadnola, Washington Beer and Wine Wholesalers Association; Dan Levine, K&L Distributors; Fred Bevegni, Marine View Beverage.

CON: Paul Beveridge, Family Wineries of Washington.

OTHER: Rick Garza, Liquor Control Board; Steve Gano, Miller Coors; Jeff Gombosky, Anheuser-Busch-InBev; Michael Transue, Washington Restaurant Association; Holly Chisa, North West Grocery Association.