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SENATE BILL 5403

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State of Washington                      61st Legislature                      2009 Regular Session

By Senators Keiser, Hewitt, Honeyford, Franklin, and Kohl-Welles

Read first time 01/21/09. Referred to Committee on Labor, Commerce & Consumer Protection.

1            AN ACT Relating to the contractual relationships between  
2 distributors and producers of malt beverages; and amending RCW  
3 19.126.010, 19.126.020, 19.126.030, 19.126.040, 19.126.060, and  
4 19.126.080.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            **Sec. 1.** RCW 19.126.010 and 2003 c 59 s 1 are each amended to read  
7 as follows:

8            (1) The legislature recognizes that preservation of three viable,  
9 independent tiers of entities involved in the distribution and sale of  
10 malt beverages and wine in the state of Washington is necessary to  
11 facilitate orderly marketing of alcohol in the state, encourage  
12 moderation in the consumption of alcohol by citizens of the state,  
13 protect the public interest in limiting consumption of alcohol by  
14 minors and in limiting other abusive consumption of alcohol, and  
15 facilitate collection of taxes by the state. The legislature further  
16 recognizes that both suppliers and wholesale distributors of malt  
17 beverages are interested in the goal of best serving the public  
18 interest through the fair, efficient, and competitive distribution of

1 such beverages. The legislature encourages them to achieve this goal  
2 by:

3 (a) Assuring the wholesale distributor's freedom to manage the  
4 business enterprise, including the wholesale distributor's right to  
5 independently establish its selling prices; and

6 (b) Assuring the supplier and the public of service from wholesale  
7 distributors who will devote their best competitive efforts and  
8 resources to sales and distribution of the supplier's products which  
9 the wholesale distributor has been granted the right to sell and  
10 distribute.

11 (2) This chapter governs the relationship between suppliers of malt  
12 beverages and their wholesale distributors to the full extent  
13 consistent with the Constitution and laws of this state and of the  
14 United States.

15 **Sec. 2.** RCW 19.126.020 and 2004 c 160 s 19 are each amended to  
16 read as follows:

17 The definitions (~~(set forth)~~) in this section apply throughout this  
18 chapter unless the context clearly requires otherwise.

19 (1) "Agreement of distributorship" means any contract, agreement,  
20 commercial relationship, license, association, or any other  
21 arrangement, for a definite or indefinite period, between a supplier  
22 and distributor.

23 (2) "Brand" means any word, name, group of letters, symbol, or  
24 combination thereof, including the name of the brewer if the brewer's  
25 name is also a significant part of the product name, adopted and used  
26 by a supplier to identify a specific malt beverage product and to  
27 distinguish that product from other malt beverages produced by that  
28 supplier or other suppliers.

29 (3) "Distributor" means any person, including but not limited to a  
30 component of a supplier's distribution system constituted as an  
31 independent business, importing or causing to be imported into this  
32 state, or purchasing or causing to be purchased within this state, any  
33 malt beverage for sale or resale to retailers licensed under the laws  
34 of this state, regardless of whether the business of such person is  
35 conducted under the terms of any agreement with a malt beverage  
36 manufacturer.

1       (~~(3)~~) (4) "Supplier" means any malt beverage manufacturer or  
2 importer who enters into or is a party to any agreement of  
3 distributorship with a wholesale distributor. "Supplier" does not  
4 include: (a) Any domestic brewery or microbrewery licensed under RCW  
5 66.24.240 and producing less than (~~(fifty)~~) two hundred thousand  
6 barrels of malt liquor annually; (b) any brewer or manufacturer of malt  
7 liquor producing less than (~~(fifty)~~) two hundred thousand barrels of  
8 malt liquor annually and holding a certificate of approval issued under  
9 RCW 66.24.270; or (c) any authorized representative of malt liquor  
10 manufacturers who holds an appointment from one or more malt liquor  
11 manufacturers which, in the aggregate, produce less than (~~(fifty)~~) two  
12 hundred thousand barrels of malt liquor.

13       (~~(4)~~) (5) "Malt beverage manufacturer" means every brewer,  
14 fermenter, processor, bottler, or packager of malt beverages located  
15 within or outside this state, or any other person, whether located  
16 within or outside this state, who enters into an agreement of  
17 distributorship for the resale of malt beverages in this state with any  
18 wholesale distributor doing business in the state of Washington.

19       (~~(5)~~) (6) "Importer" means any distributor importing beer into  
20 this state for sale to retailer accounts or for sale to other  
21 distributors designated as "subjobbers" for resale.

22       (~~(6)~~) (7) "Authorized representative" has the same meaning as  
23 "authorized representative" as defined in RCW 66.04.010.

24       (~~(7)~~) (8) "Person" means any natural person, corporation,  
25 partnership, trust, agency, or other entity, as well as any individual  
26 officers, directors, or other persons in active control of the  
27 activities of such entity.

28       (9) "Successor distributor" means any distributor who enters into  
29 an agreement, whether oral or written, to distribute a brand of malt  
30 beverages after the supplier with whom such agreement is made or the  
31 person from whom that supplier acquired the right to manufacture or  
32 distribute the brand has terminated, cancelled, or failed to renew an  
33 agreement of distributorship, whether oral or written, with another  
34 distributor to distribute that same brand of malt beverages.

35       (10) "Terminated distributor" means a distributor whose agreement  
36 of distributorship with respect to a brand of malt beverages, whether  
37 oral or written, has been terminated, cancelled, or not renewed.

1       **Sec. 3.** RCW 19.126.030 and 1984 c 169 s 3 are each amended to read  
2 as follows:

3       Suppliers are entitled to the following protections which (~~shall~~  
4 ~~be~~) are deemed to be incorporated (~~in the~~) into every agreement of  
5 distributorship, whether oral or written:

6       (1) Agreements between suppliers and wholesale distributors shall  
7 be in writing;

8       (2) A wholesale distributor shall maintain the financial and  
9 competitive capability necessary to achieve efficient and effective  
10 distribution of the supplier's products;

11       (3) A wholesale distributor shall maintain the quality and  
12 integrity of the supplier's product in the manner set forth by the  
13 supplier;

14       (4) A wholesale distributor shall exert its best efforts to sell  
15 the product of the supplier and shall merchandise such products in the  
16 stores of its retail customers as agreed between the wholesale  
17 distributor and supplier;

18       (5) The supplier may cancel or otherwise terminate any agreement  
19 with a wholesale distributor immediately and without notice if the  
20 reason for such termination is fraudulent conduct in any of the  
21 wholesale distributor's dealings with the supplier or its products,  
22 insolvency, the occurrence of an assignment for the benefit of  
23 creditors, bankruptcy, or suspension in excess of fourteen days or  
24 revocation of a license issued by the state liquor board;

25       (6) A wholesale distributor shall give the supplier prior written  
26 notice, of not less than ninety days, of any material change in its  
27 ownership or management and the supplier has the right to reasonable  
28 prior approval of any such change; and

29       (7) A wholesale distributor shall give the supplier prior written  
30 notice, of not less than ninety days, of the wholesale distributor's  
31 intent to cancel or otherwise terminate the distributorship agreement.

32       **Sec. 4.** RCW 19.126.040 and 1984 c 169 s 4 are each amended to read  
33 as follows:

34       Wholesale distributors are entitled to the following protections  
35 which (~~shall be~~) are deemed to be incorporated (~~in the~~) into every  
36 agreement of distributorship, whether oral or written:

1 (1) Agreements between wholesale distributors and suppliers shall  
2 be in writing;

3 (2) A supplier shall give the wholesale distributor at least sixty  
4 days prior written notice of the supplier's intent to cancel or  
5 otherwise terminate the agreement, unless such termination is based on  
6 a reason set forth in RCW 19.126.030(5) or results from a supplier  
7 acquiring the right to manufacture or distribute a particular brand and  
8 electing to have that brand handled by a different distributor. The  
9 notice shall state all the reasons for the intended termination or  
10 cancellation. Upon receipt of notice, the wholesale distributor shall  
11 have sixty days in which to rectify any claimed deficiency. If the  
12 deficiency is rectified within this sixty-day period, the proposed  
13 termination or cancellation is null and void and without legal effect;

14 ~~(3) ((The wholesale distributor is entitled to compensation for the~~  
15 ~~laid-in cost of inventory and liquidated damages measured on the fair~~  
16 ~~market price of the business as provided for in the agreement for any~~  
17 ~~termination of the agreement by the supplier other than termination for~~  
18 ~~cause, for failure to live up to the terms and conditions of the~~  
19 ~~agreement, or any reason set forth in RCW 19.126.030(5)); and~~

20 ~~(4))~~ The wholesale distributor may sell or transfer its business,  
21 or any portion thereof, including the agreement, to successors in  
22 interest upon prior approval of the transfer by the supplier. No  
23 supplier may unreasonably withhold or delay its approval of any  
24 transfer, including wholesaler's rights and obligations under the terms  
25 of the agreement, if the person or persons to be substituted meet  
26 reasonable standards imposed by the supplier.

27 (4) If an agreement of distributorship is terminated, cancelled, or  
28 not renewed for any reason other than failure to live up to the terms  
29 and conditions of the agreement or a reason set forth in RCW  
30 19.126.030(5), the wholesale distributor is entitled to compensation  
31 from the successor distributor for the laid-in cost of inventory and  
32 for the fair market value of the terminated distribution rights. For  
33 purposes of this section, termination, cancellation, or nonrenewal of  
34 a distributor's right to distribute a particular brand constitutes  
35 termination, cancellation, or nonrenewal of an agreement of  
36 distributorship whether or not the distributor retains the right to  
37 continue distribution of other brands for the supplier. In the case of  
38 a termination resulting from a supplier acquiring the right to

1 manufacture or distribute a particular brand and electing to have that  
2 brand handled by a different distributor, the affected distribution  
3 rights will not transfer until such time as the compensation to be paid  
4 to the terminated distributor has been finally determined by agreement  
5 or arbitration.

6 (5) When a terminated distributor is entitled to compensation under  
7 subsection (4) of this section, a successor distributor must compensate  
8 the terminated distributor for the fair market value of the terminated  
9 distributor's rights to distribute the brand, less any amount paid to  
10 the terminated distributor by a supplier or other person with respect  
11 to the termination of distribution rights for the brand. If the  
12 terminated distributor's distribution rights to a brand of malt  
13 beverages are divided among two or more successor distributors, each  
14 successor distributor must compensate the terminated distributor for  
15 the fair market value of the distribution rights assumed by that  
16 successor distributor, less a proportionate share of any amount paid to  
17 the terminated distributor by a supplier or other person with respect  
18 to the termination of distribution rights for the brand. A terminated  
19 distributor may not receive total compensation under this subsection  
20 that exceeds the fair market value of the terminated distributor's  
21 distribution rights with respect to the affected brand.

22 (6) For purposes of this section, the "fair market value" of  
23 distribution rights as to a particular brand means the amount that a  
24 willing buyer would pay and a willing seller would accept for such  
25 distribution rights when neither is acting under compulsion and both  
26 have knowledge of all facts material to the transaction. "Fair market  
27 value" is determined as of the date on which the distribution rights  
28 are to be transferred in accordance with subsection (4) of this  
29 section.

30 (7) In the event the terminated distributor and the successor  
31 distributor do not agree on the fair market value of the affected  
32 distribution rights within thirty days after the terminated distributor  
33 is given notice of termination pursuant to subsection (2) of this  
34 section, the matter must be submitted to binding arbitration. Unless  
35 the parties agree otherwise, such arbitration must be conducted in  
36 accordance with the American arbitration association commercial  
37 arbitration rules.

1       (8) In the event of a material change in the terms of an agreement  
2 of distribution, the revised agreement must be considered a new  
3 agreement for purposes of determining the law applicable to the  
4 agreement after the date of the material change, whether or not the  
5 agreement of distribution is or purports to be a continuing agreement  
6 and without regard to the process by which the material change is  
7 effected.

8       **Sec. 5.** RCW 19.126.060 and 1984 c 169 s 6 are each amended to read  
9 as follows:

10       In any action or arbitration brought by a wholesale distributor or  
11 a supplier pursuant to this chapter, the prevailing party shall be  
12 awarded its reasonable attorney's fees and costs.

13       **Sec. 6.** RCW 19.126.080 and 1985 c 440 s 3 are each amended to read  
14 as follows:

15       A person injured by a violation of this chapter, other than a  
16 person seeking only a determination of the compensation due to a  
17 terminated distributor under RCW 19.126.040(4), may bring a civil  
18 action in a court of competent jurisdiction to enjoin further  
19 violations. Injunctive relief may be granted in an action brought  
20 under this chapter without the injured party being required to post  
21 bond if, in the opinion of the court, there exists a likelihood that  
22 the injured party will prevail on the merits.

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