
ENGROSSED SUBSTITUTE SENATE BILL 5403

State of Washington

61st Legislature

2009 Regular Session

By Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Keiser, Hewitt, Honeyford, Franklin, and Kohl-Welles)

READ FIRST TIME 02/17/09.

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

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

5 **Sec. 1.** RCW 19.126.020 and 2004 c 160 s 19 are each amended to
6 read as follows:

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

9 (1) "Agreement of distributorship" means any contract, agreement,
10 commercial relationship, license, association, or any other
11 arrangement, for a definite or indefinite period, between a supplier
12 and distributor.

13 (2) "Brand" means any word, name, group of letters, symbol, or
14 combination thereof, including the name of the brewer if the brewer's
15 name is also a significant part of the product name, adopted and used
16 by a supplier to identify a specific malt beverage product and to
17 distinguish that product from other malt beverages produced by that
18 supplier or other suppliers.

1 (3) "Distributor" means any person, including but not limited to a
2 component of a supplier's distribution system constituted as an
3 independent business, importing or causing to be imported into this
4 state, or purchasing or causing to be purchased within this state, any
5 malt beverage for sale or resale to retailers licensed under the laws
6 of this state, regardless of whether the business of such person is
7 conducted under the terms of any agreement with a malt beverage
8 manufacturer.

9 ~~((+3))~~ (4) "Supplier" means any malt beverage manufacturer or
10 importer who enters into or is a party to any agreement of
11 distributorship with a wholesale distributor. "Supplier" does not
12 include: (a) Any domestic brewery or microbrewery licensed under RCW
13 66.24.240 and producing less than ~~((fifty))~~ two hundred thousand
14 barrels of malt liquor annually; (b) any brewer or manufacturer of malt
15 liquor producing less than ~~((fifty))~~ two hundred thousand barrels of
16 malt liquor annually and holding a certificate of approval issued under
17 RCW 66.24.270; or (c) any authorized representative of malt liquor
18 manufacturers who holds an appointment from one or more malt liquor
19 manufacturers which, in the aggregate, produce less than ~~((fifty))~~ two
20 hundred thousand barrels of malt liquor.

21 ~~((+4))~~ (5) "Malt beverage manufacturer" means every brewer,
22 fermenter, processor, bottler, or packager of malt beverages located
23 within or outside this state, or any other person, whether located
24 within or outside this state, who enters into an agreement of
25 distributorship for the resale of malt beverages in this state with any
26 wholesale distributor doing business in the state of Washington.

27 ~~((+5))~~ (6) "Importer" means any distributor importing beer into
28 this state for sale to retailer accounts or for sale to other
29 distributors designated as "subjobbers" for resale.

30 ~~((+6))~~ (7) "Authorized representative" has the same meaning as
31 "authorized representative" as defined in RCW 66.04.010.

32 ~~((+7))~~ (8) "Person" means any natural person, corporation,
33 partnership, trust, agency, or other entity, as well as any individual
34 officers, directors, or other persons in active control of the
35 activities of such entity.

36 (9) "Successor distributor" means any distributor who enters into
37 an agreement, whether oral or written, to distribute a brand of malt
38 beverages after the supplier with whom such agreement is made or the

1 person from whom that supplier acquired the right to manufacture or
2 distribute the brand has terminated, canceled, or failed to renew an
3 agreement of distributorship, whether oral or written, with another
4 distributor to distribute that same brand of malt beverages.

5 (10) "Terminated distributor" means a distributor whose agreement
6 of distributorship with respect to a brand of malt beverages, whether
7 oral or written, has been terminated, canceled, or not renewed.

8 (11) "Terminated distribution rights" means distribution rights
9 with respect to a brand of malt beverages which are lost by a
10 terminated distributor as a result of termination, cancellation, or
11 nonrenewal of an agreement of distributorship for that brand.

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

14 Suppliers are entitled to the following protections which (~~shall~~
15 ~~be~~) are deemed to be incorporated (~~in the~~) into every agreement of
16 distributorship:

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

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

22 (3) A wholesale distributor shall maintain the quality and
23 integrity of the supplier's product in the manner set forth by the
24 supplier;

25 (4) A wholesale distributor shall exert its best efforts to sell
26 the product of the supplier and shall merchandise such products in the
27 stores of its retail customers as agreed between the wholesale
28 distributor and supplier;

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

36 (6) A wholesale distributor shall give the supplier prior written

1 notice, of not less than ninety days, of any material change in its
2 ownership or management and the supplier has the right to reasonable
3 prior approval of any such change; and

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

7 **Sec. 3.** RCW 19.126.040 and 1984 c 169 s 4 are each amended to read
8 as follows:

9 Wholesale distributors are entitled to the following protections
10 which (~~shall be~~) are deemed to be incorporated (~~in the~~) into every
11 agreement of distributorship:

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

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

25 (~~(3) (The wholesale distributor is entitled to compensation for the~~
26 ~~laid in cost of inventory and liquidated damages measured on the fair~~
27 ~~market price of the business as provided for in the agreement for any~~
28 ~~termination of the agreement by the supplier other than termination for~~
29 ~~cause, for failure to live up to the terms and conditions of the~~
30 ~~agreement, or any reason set forth in RCW 19.126.030(5); and~~

31 ~~(4))~~) The wholesale distributor may sell or transfer its business,
32 or any portion thereof, including the agreement, to successors in
33 interest upon prior approval of the transfer by the supplier. No
34 supplier may unreasonably withhold or delay its approval of any
35 transfer, including wholesaler's rights and obligations under the terms
36 of the agreement, if the person or persons to be substituted meet
37 reasonable standards imposed by the supplier.

1 (4) If an agreement of distributorship is terminated, canceled, or
2 not renewed for any reason other than for cause, failure to live up to
3 the terms and conditions of the agreement, or a reason set forth in RCW
4 19.126.030(5), the wholesale distributor is entitled to compensation
5 from the successor distributor for the laid-in cost of inventory and
6 for the fair market value of the terminated distribution rights. For
7 purposes of this section, termination, cancellation, or nonrenewal of
8 a distributor's right to distribute a particular brand constitutes
9 termination, cancellation, or nonrenewal of an agreement of
10 distributorship whether or not the distributor retains the right to
11 continue distribution of other brands for the supplier. In the case of
12 terminated distribution rights resulting from a supplier acquiring the
13 right to manufacture or distribute a particular brand and electing to
14 have that brand handled by a different distributor, the affected
15 distribution rights will not transfer until such time as the
16 compensation to be paid to the terminated distributor has been finally
17 determined by agreement or arbitration.

18 (5) When a terminated distributor is entitled to compensation under
19 subsection (4) of this section, a successor distributor must compensate
20 the terminated distributor for the fair market value of the terminated
21 distributor's rights to distribute the brand, less any amount paid to
22 the terminated distributor by a supplier or other person with respect
23 to the terminated distribution rights for the brand. If the terminated
24 distributor's distribution rights to a brand of malt beverages are
25 divided among two or more successor distributors, each successor
26 distributor must compensate the terminated distributor for the fair
27 market value of the distribution rights assumed by that successor
28 distributor, less any amount paid to the terminated distributor by a
29 supplier or other person with respect to the terminated distribution
30 rights assumed by the successor distributor. A terminated distributor
31 may not receive total compensation under this subsection that exceeds
32 the fair market value of the terminated distributor's distribution
33 rights with respect to the affected brand. Nothing in this section
34 shall be construed to require any supplier or other third person to
35 make any payment to a terminated distributor.

36 (6) For purposes of this section, the "fair market value" of
37 distribution rights as to a particular brand means the amount that a
38 willing buyer would pay and a willing seller would accept for such

1 distribution rights when neither is acting under compulsion and both
2 have knowledge of all facts material to the transaction. "Fair market
3 value" is determined as of the date on which the distribution rights
4 are to be transferred in accordance with subsection (4) of this
5 section.

6 (7) In the event the terminated distributor and the successor
7 distributor do not agree on the fair market value of the affected
8 distribution rights within thirty days after the terminated distributor
9 is given notice of termination, the matter must be submitted to binding
10 arbitration. Unless the parties agree otherwise, such arbitration must
11 be conducted in accordance with the American arbitration association
12 commercial arbitration rules with each party to bear its own costs and
13 attorneys' fees.

14 (8) Unless the parties otherwise agree, or the arbitrator for good
15 cause shown orders otherwise, an arbitration conducted pursuant to
16 subsection (7) of this section shall proceed as follows:

17 (a) Notice of intent to arbitrate must be served within forty days
18 after the terminated distributor receives notice of the terminated
19 distribution rights;

20 (b) The arbitration must be conducted within ninety days after
21 service of the notice of intent to arbitrate; and

22 (c) The arbitrator or arbitrators must issue an order within thirty
23 days after completion of the arbitration.

24 (9) In the event of a material change in the terms of an agreement
25 of distribution, the revised agreement must be considered a new
26 agreement for purposes of determining the law applicable to the
27 agreement after the date of the material change, whether or not the
28 agreement of distribution is or purports to be a continuing agreement
29 and without regard to the process by which the material change is
30 effected.

31 **Sec. 4.** RCW 19.126.060 and 1984 c 169 s 6 are each amended to read
32 as follows:

33 In any action or arbitration brought by a wholesale distributor or
34 a supplier pursuant to this chapter, other than an arbitration to
35 determine the compensation due to a terminated distributor under RCW
36 19.126.040(4), the prevailing party shall be awarded its reasonable
37 attorney's fees and costs.

1 **Sec. 5.** RCW 19.126.080 and 1985 c 440 s 3 are each amended to read
2 as follows:

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

--- END ---