FINAL BILL REPORT
ESHB 1441

C 155 L 09
Synopsis as Enacted

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

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Condotta, Armstrong, White and Eddy).

House Committee on Commerce & Labor
Senate Committee on Labor, Commerce & Consumer Protection

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 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 and requires compensation when agreements are terminated or cancelled in some circumstances.

<u>Cancellation or Termination of an Agreement</u>. 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.

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

<u>Measure of Compensation</u>. 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.

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.

Summary:

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 an 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. Compensation is required unless the agreement was terminated, cancelled, or not renewed for (1) cause; (2) failure to live up to the terms and conditions of the agreement; or (3) insolvency, bankruptcy, liquor license suspension or revocation, fraudulent conduct, or other reason specified in statute. 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 formula is set forth 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. Timelines are set forth for an 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.

Votes on Final Passage:

House	97	0
Senate	47	0

Effective: July 26, 2009