
HOUSE BILL 1411

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Kirby and Condotta

Read first time 01/25/13. Referred to Committee on Government
Accountability & Oversight.

1 AN ACT Relating to removing spirits from wholesale distributors and
2 suppliers of malt beverages provisions; and amending RCW 19.126.010,
3 19.126.020, and 19.126.040.

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

5 **Sec. 1.** RCW 19.126.010 and 2012 c 2 s 212 (Initiative Measure No.
6 1183) are each amended to read as follows:

7 (1) The legislature recognizes that both suppliers and wholesale
8 distributors of malt beverages (~~and spirits~~) are interested in the
9 goal of best serving the public interest through the fair, efficient,
10 and competitive distribution of such beverages. The legislature
11 encourages them to achieve this goal by:

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

15 (b) Assuring the supplier and the public of service from wholesale
16 distributors who will devote their best competitive efforts and
17 resources to sales and distribution of the supplier's products which
18 the wholesale distributor has been granted the right to sell and
19 distribute.

1 (2) This chapter governs the relationship between suppliers of malt
2 beverages (~~and spirits~~) and their wholesale distributors to the full
3 extent consistent with the Constitution and laws of this state and of
4 the United States.

5 **Sec. 2.** RCW 19.126.020 and 2012 c 2 s 213 (Initiative Measure No.
6 1183) are each amended to read as follows:

7 The definitions in this section apply throughout this chapter
8 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) "Authorized representative" has the same meaning as "authorized
14 representative" as defined in RCW 66.04.010.

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

22 (4) "Distributor" means any person, including but not limited to a
23 component of a supplier's distribution system constituted as an
24 independent business, importing or causing to be imported into this
25 state, or purchasing or causing to be purchased within this state, any
26 (~~spirits or~~) malt beverages for sale or resale to retailers licensed
27 under the laws of this state, regardless of whether the business of
28 such person is conducted under the terms of any agreement with a
29 distiller or malt beverage manufacturer.

30 (5) "Importer" means any distributor importing (~~spirits or~~) beer
31 into this state for sale to retailer accounts or for sale to other
32 distributors designated as "subjobbers" for resale.

33 (6) "Malt beverage manufacturer" means every brewer, fermenter,
34 processor, bottler, or packager of malt beverages located within or
35 outside this state, or any other person, whether located within or
36 outside this state, who enters into an agreement of distributorship for

1 the resale of malt beverages in this state with any wholesale
2 distributor doing business in the state of Washington.

3 (7) "Person" means any natural person, corporation, partnership,
4 trust, agency, or other entity, as well as any individual officers,
5 directors, or other persons in active control of the activities of such
6 entity.

7 (~~(8)~~) (~~"Spirits manufacturer" means every distiller, processor,~~
8 ~~bottler, or packager of spirits located within or outside this state,~~
9 ~~or any other person, whether located within or outside this state, who~~
10 ~~enters into an agreement of distributorship for the resale of spirits~~
11 ~~in this state with any wholesale distributor doing business in the~~
12 ~~state of Washington.~~

13 (~~9~~) "Successor distributor" means any distributor who enters into
14 an agreement, whether oral or written, to distribute a brand of
15 (~~spirits or~~) malt beverages after the supplier with whom such
16 agreement is made or the person from whom that supplier acquired the
17 right to manufacture or distribute the brand has terminated, canceled,
18 or failed to renew an agreement of distributorship, whether oral or
19 written, with another distributor to distribute that same brand of
20 (~~spirits or~~) malt beverages.

21 (~~(10)~~) (9) "Supplier" means any (~~spirits or~~) malt beverage
22 manufacturer or importer who enters into or is a party to any agreement
23 of distributorship with a wholesale distributor. "Supplier" does not
24 include: (a) Any (~~distiller licensed under RCW 66.24.140 or 66.24.145~~
25 ~~and producing less than sixty thousand proof gallons of spirits~~
26 ~~annually or any~~) brewery or microbrewery licensed under RCW 66.24.240
27 and producing less than two hundred thousand barrels of malt liquor
28 annually; (b) any brewer or manufacturer of malt liquor producing less
29 than two hundred thousand barrels of malt liquor annually and holding
30 a certificate of approval issued under RCW 66.24.270; or (c) any
31 authorized representative of distillers or malt liquor manufacturers
32 who holds an appointment from one or more distillers or malt liquor
33 manufacturers which, in the aggregate, produce less than two hundred
34 thousand barrels of malt liquor (~~or sixty thousand proof gallons of~~
35 ~~spirits~~).

36 (~~(11)~~) (10) "Terminated distribution rights" means distribution
37 rights with respect to a brand of malt beverages which are lost by a

1 terminated distributor as a result of termination, cancellation, or
2 nonrenewal of an agreement of distributorship for that brand.

3 ~~((+12+))~~ (11) "Terminated distributor" means a distributor whose
4 agreement of distributorship with respect to a brand of (~~spirits or~~)
5 malt beverages, whether oral or written, has been terminated, canceled,
6 or not renewed.

7 **Sec. 3.** RCW 19.126.040 and 2012 c 2 s 214 (Initiative Measure No.
8 1183) are each amended to read as follows:

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

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

14 (2) A supplier must 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 must state all the reasons for the intended termination or
21 cancellation. Upon receipt of notice, the wholesale distributor has
22 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 may sell or transfer its business, or
26 any portion thereof, including the agreement, to successors in interest
27 upon prior approval of the transfer by the supplier. No supplier may
28 unreasonably withhold or delay its approval of any transfer, including
29 wholesaler's rights and obligations under the terms of the agreement,
30 if the person or persons to be substituted meet reasonable standards
31 imposed by the supplier;

32 (4) If an agreement of distributorship is terminated, canceled, or
33 not renewed for any reason other than for cause, failure to live up to
34 the terms and conditions of the agreement, or a reason set forth in RCW
35 19.126.030(5), the wholesale distributor is entitled to compensation
36 from the successor distributor for the laid-in cost of inventory and
37 for the fair market value of the terminated distribution rights. For

1 purposes of this section, termination, cancellation, or nonrenewal of
2 a distributor's right to distribute a particular brand constitutes
3 termination, cancellation, or nonrenewal of an agreement of
4 distributorship whether or not the distributor retains the right to
5 continue distribution of other brands for the supplier. In the case of
6 terminated distribution rights resulting from a supplier acquiring the
7 right to manufacture or distribute a particular brand and electing to
8 have that brand handled by a different distributor, the affected
9 distribution rights will not transfer until such time as the
10 compensation to be paid to the terminated distributor has been finally
11 determined by agreement or arbitration;

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

30 (6) For purposes of this section, the "fair market value" of
31 distribution rights as to a particular brand means the amount that a
32 willing buyer would pay and a willing seller would accept for such
33 distribution rights when neither is acting under compulsion and both
34 have knowledge of all facts material to the transaction. "Fair market
35 value" is determined as of the date on which the distribution rights
36 are to be transferred in accordance with subsection (4) of this
37 section;

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

9 (8) Unless the parties otherwise agree, or the arbitrator for good
10 cause shown orders otherwise, an arbitration conducted pursuant to
11 subsection (7) of this section must proceed as follows: (a) The notice
12 of intent to arbitrate must be served within forty days after the
13 terminated distributor receives notice of terminated distribution
14 rights; (b) the arbitration must be conducted within ninety days after
15 service of the notice of intent to arbitrate; and (c) the arbitrator or
16 arbitrators must issue an order within thirty days after completion of
17 the arbitration;

18 (9) In the event of a material change in the terms of an agreement
19 of distribution, the revised agreement must be considered a new
20 agreement for purposes of determining the law applicable to the
21 agreement after the date of the material change, whether or not the
22 agreement of distribution is or purports to be a continuing agreement
23 and without regard to the process by which the material change is
24 effected.

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