

January 23, 1998

Mr. President:

The Business, Labor, and Economic Development Committee reports a favorable recommendation on **S.B. 73**, BEER INDUSTRY DISTRIBUTION ACT, by Senator L. Blackham, with the following amendments:

1. Page 1, Line 10: After "REMEDIES;" delete "ADDRESSING APPLICABILITY;"
2. Page 1, Line 11: After "SEVERABILITY;" delete "AND" and after "DATE" insert "; AND PROVIDING A COORDINATION CLAUSE"
3. Page 1, Line 18: After line 18 insert "**32A-11a-105.5**, Utah Code Annotated 1953"
4. Page 1, Line 24: Delete line 24
5. Page 2, Line 7: After "suppliers" delete "and" and insert "."
6. Page 2, Line 8: After "wholesalers" insert ", and retailers"
7. Page 2, Line 17: After "means any" insert "written"
8. Page 2, Line 21: After "(b)" insert:
"A separate agreement between a supplier and a wholesaler that relates to the relationship between the supplier and the wholesaler or the duties of either of them under a distributorship agreement is considered to be part of the distributorship agreement for purposes of this chapter.
(c)"
9. Page 2, Line 26: After line 26 insert:

Bill Number

Action Class

Action Code

SB0073

S

SCRAMD

"(5) "Retailer" means a person subject to license under Chapter 10, Beer Retailer Licenses."

10. Page 2, Line 27: Delete "(5)" and insert "(6)"
11. Page 2, Line 29: Delete "(6)" and insert "(7)"
12. Page 2, Line 31: Delete "(7)" and insert "(8)"
13. Page 4, Line 9: After "more than" delete "20%" and insert "10%"
14. Page 4, Line 15: Delete line 15 and after line 15 delete "order involving" and insert "engages in intentional"
15. Page 4, Line 25: After "owner;" delete "and"
16. Page 4, Line 26: After "(b)" insert:
"the offending owner was not materially involved in the management of the affected party; and
(c)"
17. Page 6, Line 5: After line 5 insert:
"Section 6. Section **32A-11a-105.5** is enacted to read:
32A-11a-105.5. Prohibited conduct of wholesaler.
(1) A wholesaler may not:
(a) induce, coerce, or attempt to induce or coerce, any retailer to engage in any illegal act or course of conduct;
(b) impose a requirement that is discriminatory by its terms or in the methods of enforcement as compared to requirements imposed by the wholesaler on similarly situated retailers;
(c) prohibit a retailer from selling the product of any other wholesaler;
(d) fix or maintain the price at which a retailer may resell beer;
(e) require any retailer to accept delivery of any beer or any other item that is not voluntarily ordered by the retailer;
(f) restrict or inhibit, directly or indirectly, the right of a retailer to participate in an organization representing interests of retailers for any lawful purpose;

Bill Number

Action Class

Action Code

SB0073

S

SCRAMD

(g) require a retailer to participate in or contribute to any local, regional, or national advertising fund or other promotional activity;
(h) retaliate against a retailer that files a complaint with the department or the applicable federal agency regarding an alleged violation by the wholesaler of a state or federal law or administrative rule;
(i) refuse to deliver beer products carried by the wholesaler to a properly licensed retailer who resides within the wholesaler's sales territory;
(i) in reasonable quantities; and
(ii) within a reasonable time after receipt of the retailer's order.
(2) Notwithstanding Subsection (1)(i), the wholesaler may refuse to deliver products if the refusal is due to:
(a) the retailer's failure to pay the wholesaler pursuant to Subsection 32A-12-603(17);
(b) an unforeseeable event beyond the wholesaler's control;
(c) a work stoppage or delay due to a strike or labor problem;
(d) a bona fide shortage of materials; or
(e) a freight embargo."

18. Page 6, Line 11: After "the owner of" delete "a 10% or more" and insert "an"
19. Page 6, Line 23: After "supplier shall" delete "pay the wholesaler" and insert "be liable to the wholesaler for the laid-in cost of inventory of the affected brands plus any diminution in"
20. Page 6, Line 27: After "(2)(a)" delete "Either" and insert "A distributorship agreement may require that any or all disputes between a supplier and a wholesaler be submitted to binding arbitration. In the absence of an applicable arbitration provision in the distributorship agreement, either"
21. Page 7, Line 3: After "Subsection (2)(a)" insert "and the other party agrees to submit the matter to arbitration"
22. Page 7, Line 26: After "wholesalers to" insert
": (i) execute a new distributorship agreement; and
(ii)"

Bill Number

Action Class

Action Code

SB0073

S

SCRAMD

January 23, 1998 - Page 4

23. Page 7, Line 27: Delete "(i)" and insert "(A)"
24. Page 7, Line 28: Delete "(ii)" and insert "(B)"
25. Page 7, Line 30: Delete "(iii)" and insert "(C)" and after "one year to" insert ": (I) execute a new distributorship agreement; and (II)"
26. Page 8, Line 21: After "(ii)" delete "neither party elects" and insert "the parties do not agree to submit the matter to"
27. Page 9, Line 12-16: Delete lines 12 through 16
28. Page 9, Line 22: After line 22 insert:
"Section 15. **Coordinating clause.**
It is the intent of the Legislature that the Office of Legislative
Research and General Counsel, as part of enrolling, shall:
(1) renumber the sections as whole numbers; and
(2) correspondingly change the cross references to the sections
renumbered by this coordinating clause."

Renumber remaining sections accordingly.

Respectfully,

Steven Poulton
Committee Chair

Voting: 5-0-1

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Bill Number

Action Class

Action Code

SB0073

S

SCRAMD

Bill Number

Action Class

Action Code

SB0073

S

SCRAMD