

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Commerce, Public Policy and Interstate Cooperation, to which was referred Senate Bill No. 244, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, delete lines 1 through 15, begin a new paragraph and insert:
2 "SECTION 1. IC 7.1-3-3-5, AS AMENDED BY P.L.94-2008,
3 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 UPON PASSAGE]: Sec. 5. (a) The holder of a beer wholesaler's permit
5 may purchase and import from the primary source of supply, possess,
6 and sell at wholesale, beer and flavored malt beverages manufactured
7 within or without this state.
8 (b) A beer wholesaler permittee may possess, transport, sell, and
9 deliver beer to:
10 (1) another beer wholesaler authorized by the brewer to sell the
11 brand purchased;
12 (2) an employee; or
13 (3) a holder of a beer retailer's permit, beer dealer's permit,
14 temporary beer permit, dining car permit, boat permit, airplane
15 permit, or supplemental caterer's permit;
16 located within this state. The sale, transportation, and delivery of beer
17 shall be made only from inventory that has been located on the
18 wholesaler's premises before the time of invoicing and delivery.
19 (c) The beer wholesaler's bona fide regular employees may purchase
20 beer from the wholesaler in:
21 (1) bottles, cans, or any other type of permissible containers in an

1 amount not to exceed forty-eight (48) pints; or
 2 (2) one (1) keg;
 3 at any one (1) time.

4 (d) The importation, transportation, possession, sale, and delivery
 5 of beer shall be subject to the rules of the commission and subject to
 6 the same restrictions provided in this title for a person holding a
 7 brewer's permit.

8 (e) The holder of a beer wholesaler's permit may purchase, import,
 9 possess, transport, sell, and deliver any commodity listed in
 10 IC 7.1-3-10-5, unless prohibited by this title. However, a beer
 11 wholesaler may deliver flavored malt beverages only to the holder of
 12 one (1) of the following permits:

13 (1) A beer wholesaler or wine wholesaler permit, if the wholesaler
 14 is authorized by the primary source of supply to sell the brand of
 15 flavored malt beverage purchased.

16 (2) A wine retailer's permit, wine dealer's permit, temporary wine
 17 permit, dining car wine permit, boat permit, airplane permit, or
 18 supplemental caterer's permit.

19 (f) A beer wholesaler may:

20 (1) store beer for an out-of-state brewer described in IC 7.1-3-2-9
 21 and deliver the stored beer to another beer wholesaler that the
 22 out-of-state brewer authorizes to sell the beer;

23 (2) perform all necessary accounting and auditing functions
 24 associated with the services described in subdivision (1); and

25 (3) receive a fee from an out-of-state brewer for the services
 26 described in subdivisions (1) through (2).

27 **(g) As used in this subsection, "brand" means any word, name,**
 28 **group of letters, symbols, or combination, including the name of a**
 29 **primary source of supply, if the name of the primary source of**
 30 **supply is also a significant part of the product name, adopted and**
 31 **used by a primary source of supply to identify a specific liquor**
 32 **product and to distinguish that liquor product from other liquor**
 33 **products. All package, size, flavor, and other variations bearing the**
 34 **unique brand name are part of the brand. Notwithstanding any**
 35 **other provision of this title to the contrary, the holder of a beer**
 36 **wholesaler's permit may purchase and import liquor from a**
 37 **primary source of supply and possess liquor and sell liquor at**
 38 **wholesale, if:**

39 (1) **the primary source of supply or any subsidiary or affiliate**
 40 **of the primary source of supply for liquor has been a primary**
 41 **source of supply for wine to the holder of the beer**
 42 **wholesaler's permit for at least two (2) years before selling**

1 **liquor to the holder of the beer wholesaler's permit; and**
 2 **(2) the brand or brands of liquor that the holder of the beer**
 3 **wholesaler's permit intends to wholesale have not been**
 4 **distributed in the state for more than two (2) years**
 5 **immediately preceding the first sale of the liquor to the holder**
 6 **of the beer wholesaler's permit."**

7 Delete pages 2 through 3.

8 Page 4, delete line 1.

9 Page 4, line 5, delete "Transfers of Liquor and Wine Brands
 10 Between" and insert "**Compensation for Transfer of Liquor and**
 11 **Wine Wholesaler Distribution Rights**".

12 Page 4, delete lines 6 through 42, begin a new paragraph and insert:

13 "**Sec. 1. This chapter applies to an action taken by a primary**
 14 **source of supply under section 12 of this chapter on or after April**
 15 **1, 2010, even if notice of the action occurs before April 1, 2010.**

16 **Sec. 2. As used in this chapter, "brand" means any word, name,**
 17 **group of letters, symbols, or combination, including the name of a**
 18 **primary source of supply, if the name of the primary source of**
 19 **supply is also a significant part of the product name, adopted and**
 20 **used by a primary source of supply to identify:**

21 **(1) a specific liquor product and to distinguish that liquor**
 22 **product from other liquor products; or**

23 **(2) a specific wine product and to distinguish that wine**
 24 **product from other wine products.**

25 **All package, size, flavor, and other variations bearing the unique**
 26 **brand name are part of the brand.**

27 **Sec. 3. As used in this chapter, "discontinued brand" means,**
 28 **with respect to a terminated wholesaler, any brand for which a**
 29 **primary source of supply has taken any of the actions described in**
 30 **section 12 of this chapter.**

31 **Sec. 4. As used in this chapter, "distribution rights" means the**
 32 **rights of a wholesaler to:**

33 **(1) purchase products bearing a brand from a primary source**
 34 **of supply; and**

35 **(2) sell the products at wholesale in Indiana under an**
 36 **agreement with a primary source of supply that is written,**
 37 **oral, or by course of dealing.**

38 **Sec. 5. As used in this chapter, "liquor wholesaler" means the**
 39 **holder of a liquor wholesaler's permit.**

40 **Sec. 6. As used in this chapter, "primary source of supply"**
 41 **includes any successor primary source of supply.**

42 **Sec. 7. As used in this chapter, "successor primary source of**

1 **supply" means a primary source of supply that obtains, in any**
 2 **manner from any person, including a person who is not a primary**
 3 **source of supply, the rights to a brand that a wholesaler has**
 4 **distributed in Indiana under an agreement that is written, oral, or**
 5 **by course of dealing with another primary source of supply who**
 6 **previously had the rights to serve as the primary source of supply**
 7 **for the brand.**

8 **Sec. 8. As used in this chapter, "successor wholesaler" means**
 9 **any wholesaler that:**

- 10 **(1) enters into an agreement that is written, oral, or by course**
 11 **of dealing to obtain a supply of a brand from a primary**
 12 **source of supply after the primary source of supply has taken**
 13 **any of the actions described in section 12 of this chapter; or**
 14 **(2) has assumed or acquired in any manner all or part of the**
 15 **distribution rights for a discontinued brand lost by a**
 16 **terminated wholesaler.**

17 **Sec. 9. As used in this chapter, "terminated wholesaler" means**
 18 **a wholesaler whose distribution rights are reduced or terminated**
 19 **as set forth in section 12 of this chapter.**

20 **Sec. 10. As used in this chapter, "wholesaler" means a liquor**
 21 **wholesaler or a wine wholesaler.**

22 **Sec. 11. As used in this chapter, "wine wholesaler" means the**
 23 **holder of a wine wholesaler's permit.**

24 **Sec. 12. A primary source of supply that:**

- 25 **(1) terminates, cancels, or fails to renew a wholesaler's**
 26 **distribution rights for a brand in whole or in part;**
 27 **(2) reduces the territory of a wholesaler's distribution rights**
 28 **for a brand;**
 29 **(3) grants to another wholesaler all or part of the distribution**
 30 **rights for a brand in all or part of the wholesaler's territory;**
 31 **or**
 32 **(4) otherwise fails to reappoint a wholesaler as a wholesaler**
 33 **for a brand with all of the distribution rights of that**
 34 **wholesaler for the brand;**

35 **is subject to this chapter.**

36 **Sec. 13. (a) Subject to sections 15 and 18 of this chapter, a**
 37 **successor wholesaler shall compensate a terminated wholesaler for**
 38 **the fair market value of the terminated wholesaler's distribution**
 39 **rights to any discontinued brand, as determined under section 14**
 40 **of this chapter, assumed by the successor wholesaler for the same**
 41 **territory, less any amount paid to the terminated wholesaler by the**
 42 **primary source of supply for the distribution rights to the**

1 **discontinued brand assumed by the successor wholesaler.**

2 **(b) If the terminated wholesaler's distribution rights to any**
3 **discontinued brand are divided among two (2) or more successor**
4 **wholesalers, each successor wholesaler shall compensate the**
5 **terminated wholesaler for the fair market value of the distribution**
6 **rights to any discontinued brand assumed by that successor**
7 **wholesaler, as determined under section 14 of this chapter, for the**
8 **applicable part of the same territory, less any amount paid to the**
9 **terminated wholesaler by the primary source of supply for**
10 **distribution rights to the discontinued brand assumed by the**
11 **successor wholesaler.**

12 **Sec. 14. The fair market value of the terminated wholesaler's**
13 **lost distribution rights to any discontinued brand is equal to the**
14 **fair market value of the terminated wholesaler's lost distribution**
15 **rights that would have been ascribed to the terminated**
16 **wholesaler's lost distribution rights for the brand in an arm's**
17 **length transaction entered into without duress or threat of**
18 **termination of the terminated wholesaler's distribution rights.**

19 **Sec. 15. A terminated wholesaler and a successor wholesaler**
20 **shall negotiate in good faith. If a terminated wholesaler and a**
21 **successor wholesaler agree to a fair market value of the terminated**
22 **wholesaler's distribution rights to any discontinued brand of liquor**
23 **or wine assumed by the successor wholesaler for the same**
24 **territory, the successor wholesaler shall pay the agreed upon sum**
25 **to the terminated wholesaler not later than thirty (30) days after**
26 **the date on which the parties reach an agreement.**

27 **Sec. 16. (a) This section applies if the parties cannot agree on the**
28 **compensation due the terminated wholesaler not later than thirty**
29 **(30) days after the terminated wholesaler receives notice of the loss**
30 **of the distribution rights for the discontinued brand.**

31 **(b) Unless otherwise agreed to by the terminated wholesaler and**
32 **successor wholesaler, upon written demand of either party, the**
33 **parties shall submit their dispute for binding arbitration under the**
34 **Commercial Arbitration Rules then in effect of the American**
35 **Arbitration Association or its successor in interest, to the extent**
36 **that the rules are not inconsistent with the provisions of this**
37 **chapter.**

38 **(c) Unless otherwise agreed to by the terminated wholesaler and**
39 **the successor wholesaler, the demand for arbitration for either**
40 **party shall be sent to the other party not later than sixty (60) days**
41 **after the terminated wholesaler receives notice of the loss of the**
42 **distribution rights for a discontinued brand.**

1 **Sec. 17. (a) The arbitration shall be conducted in a city in**
2 **Indiana that:**

- 3 **(1) has a population of more than fifty thousand (50,000); and**
4 **(2) is the closest to the location of the principal office or the**
5 **primary warehouse of the terminated wholesaler in Indiana.**

6 **(b) Unless otherwise agreed to by the terminated wholesaler and**
7 **successor wholesaler, the arbitration shall be conducted before one**
8 **(1) impartial arbitrator selected by the American Arbitration**
9 **Association.**

10 **(c) The arbitration shall be conducted on an expedited basis to**
11 **the extent an expedited proceeding is available.**

12 **Sec. 18. If the arbitrator awards compensation to the terminated**
13 **wholesaler, the successor wholesaler shall pay the awarded**
14 **compensation to the terminated wholesaler not later than thirty**
15 **(30) days after the date of the arbitrator's decision.**

16 **Sec. 19. Except as provided in section 21 of this chapter, the**
17 **terminated wholesaler and successor wholesaler shall each pay:**

- 18 **(1) its own fees and expenses incurred in connection with the**
19 **arbitration; and**
20 **(2) an equal share of the direct costs of the arbitration.**

21 **Sec. 20. The terminated wholesaler and the successor wholesaler**
22 **are considered to have consented to the determination of the**
23 **arbitrator. The decision of the arbitrator is final and binding on**
24 **the parties, and judgment may be entered in accordance with**
25 **applicable law in any court having jurisdiction.**

26 **Sec. 21. If the terminated wholesaler does not receive full**
27 **payment of the compensation under section 13 or 18 of this chapter**
28 **not later than thirty (30) days after the date of the settlement**
29 **agreement or arbitration award, the terminated wholesaler is**
30 **entitled to recover from the successor wholesaler all fees, costs, and**
31 **expenses, including reasonable attorney's fees paid or incurred in**
32 **connection with:**

- 33 **(1) the arbitration proceeding, including fees and costs of the**
34 **arbitrator; and**
35 **(2) any legal action brought to receive the payment of the**
36 **compensation under section 13 or 18 of this chapter.**

37 **Sec. 22. This chapter shall not be construed to limit or prohibit**
38 **good faith settlements voluntarily entered into by a terminated**
39 **wholesaler and a successor wholesaler."**

- 1 Delete pages 5 through 8.
- 2 Page 9, delete lines 1 through 16.
- 3 Renumber all SECTIONS consecutively.
(Reference is to SB 244 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 8, Nays 3.

Senator Alting, Chairperson