

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4078/1dn
ARG:kjf:pg

February 11, 2004

ATTN: Judi Rhodes-Engels

This bill does not require that a "successor wholesaler" be given any notice when it enters into a distribution agreement with a brewer, brewer's agent, or holder of an out-of-state shipper's permit that the successor wholesaler may potentially be liable to a terminated wholesaler under this provision. Is this consistent with your intent?

The initial applicability provision applies the bill to all brewer-wholesaler agreements terminated, cancelled, or not renewed after the bill's effective date. This means that the bill would apply immediately to existing agreements. If you would like a "phase in" so that the bill only applies to new agreements formed after the bill's effective date, the initial applicability provision could be revised to apply only to agreements entered into after the bill becomes effective.

The bill makes some changes to the language proposed in the drafting instructions to create more consistency between the terms used within the bill and more consistency with terms used elsewhere in the statutes and to reduce ambiguity.

This bill may significantly restrict businesses's freedom to contract in a competitive manner and, to the extent it is applied to existing contracts, may be subject to challenge on the basis of impairment of existing contractual obligations. Under the bill, a brewer that has the right under an existing contract to terminate the contract with a wholesaler for cause or to decide not to renew the contract upon the expiration of the contract term may, as a practical matter, be unable to exercise these contract rights because severing ties with the wholesaler would require the replacement wholesaler to pay the terminated wholesaler for lost business in perpetuity and this may make it impossible for the brewer to find a replacement wholesaler, thus forcing the brewer to continue the business relationship it is otherwise entitled to (and wants to) sever.

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