



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB1370

Introduced 2/9/2007, by Sen. James F. Clayborne, Jr.

SYNOPSIS AS INTRODUCED:

815 ILCS 720/1.1
815 ILCS 720/5

from Ch. 43, par. 301.1
from Ch. 43, par. 305

Amends the Beer Industry Fair Dealing Act. Defines "brand extension" as a brand that incorporates all or a substantial part of the features of a pre-existing brand of the same brewer and that relies to a significant extent on the good will associated with the pre-existing brand. Provides that a brewer may not fail to assign brand extensions to a wholesaler who has been granted the territory to the brand from which the brand extension resulted and who agrees to accept the brand extension, but this requirement does not apply if the wholesaler is not in compliance with the agreement at the time the brewer offers the brand extension to the wholesaler. Provides that a brewer who, under an agreement with a wholesaler that does not violate antitrust laws, has designated a sales territory for which the wholesaler is exclusively (rather than primarily) responsible or in which the wholesaler is required to concentrate its efforts, may not enter into an agreement with any other wholesaler to establish an additional wholesaler for the brewer's brand or brand extension in the territory. Provides that a wholesaler who, under an agreement is granted a sales territory for which it is exclusively (rather than primarily) responsible or in which it is required to concentrate its efforts, may not sell or deliver of beer to any retail licensee whose place of business is not within the territory granted to the wholesaler. Effective immediately.

LRB095 10884 LCT 31165 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Beer Industry Fair Dealing Act is amended by
5 changing Sections 1.1 and 5 as follows:

6 (815 ILCS 720/1.1) (from Ch. 43, par. 301.1)

7 Sec. 1.1. As used in this Act:

8 (1) "Beer" means a beverage obtained by the alcoholic
9 fermentation of an infusion or concoction of barley, or other
10 grain, malt, and hops in water, and includes, among other
11 things, beer, ale, stout, lager beer, porter and the like. For
12 purposes of this Act only, the term "beer" shall also include
13 malt beverage products containing less than one-half of 1% of
14 alcohol by volume and marketed for adult consumption as an
15 alternative beverage to beer.

16 (2) "Agreement" means any contract, agreement,
17 arrangement, operating standards, or amendments to a contract,
18 agreement, arrangement, or operating standards, the effect of
19 which is to substantially change or modify the existing
20 contract, agreement, arrangement, or operating standards,
21 whether expressed or implied, whether oral or written, for a
22 definite or indefinite period between a brewer and a wholesaler
23 pursuant to which a wholesaler has been granted the right to

1 purchase, resell, and distribute as wholesaler or master
2 distributor any brand or brands of beer offered by a brewer.
3 The agreement between a brewer and wholesaler shall not be
4 considered a franchise relationship.

5 (3) "Wholesaler" or "beer wholesaler" means any person,
6 other than a manufacturer licensed under The Liquor Control Act
7 of 1934, who is engaged in this State in purchasing, storing,
8 possessing or warehousing any alcoholic liquors for resale or
9 reselling at wholesale, whether within or without this State.

10 (4) "Brewer" means a person who is engaged in the
11 manufacture of beer, a master distributor as defined in this
12 Section, a successor brewer as defined in this Section, a
13 non-resident dealer under the provisions of the Liquor Control
14 Act of 1934, a foreign importer under the provisions of the
15 Liquor Control Act of 1934, or a person who owns or controls
16 the trademark, brand, or name of beer.

17 (4.5) "Brand" means any word, name, group of letters,
18 symbols, or any combination thereof that is adopted and used by
19 a brewer to identify a specific beer product and to distinguish
20 that beer product from another beer product.

21 (4.7) "Brand extension" means any brand that incorporates
22 all or a substantial part of the features of a pre-existing
23 brand of the same brewer and that relies to a significant
24 extent on the good will associated with the pre-existing brand.

25 (5) "Master Distributor" means a person who, in addition to
26 being a wholesaler, acts in the same or similar capacity as a

1 brewer or outside seller of one or more brands of beer to other
2 wholesalers on a regular basis in the normal course of
3 business.

4 (6) "Successor Brewer" means any person who in any way
5 obtains the distribution rights that a brewer or master
6 distributor once had to manufacture or distribute a brand or
7 brands of beer whether by merger, purchase of corporate shares,
8 purchase of assets, or any other arrangement.

9 (7) "Person" means a natural person, partnership,
10 corporation, trust, agency, or other form of business
11 enterprise. Person also includes heirs, assigns, personal
12 representatives and guardians.

13 (8) "Territory" or "sales territory" means the geographic
14 area of primary sales responsibility designated by an agreement
15 between a wholesaler and brewer for any brand or brands of the
16 brewer.

17 (9) "Good cause" exists if the wholesaler or affected party
18 has failed to comply with essential and reasonable requirements
19 imposed upon the wholesaler or affected party by the agreement.
20 The requirements may not be discriminating either by their
21 terms or in the methods of their enforcement as compared with
22 requirements imposed on other similarly situated wholesalers
23 by the brewer. The requirements may not be inconsistent with
24 this Act or in violation of any law or regulation.

25 (10) "Good faith" means honesty in fact and the observance
26 of reasonable commercial standards of fair dealing in the trade

1 as defined and interpreted under Section 2-103 of the Uniform
2 Commercial Code.

3 (11) "Reasonable standards and qualifications" means those
4 criteria applied by the brewer to similarly situated
5 wholesalers during a period of 24 months before the proposed
6 change in manager or successor manager of the wholesaler's
7 business.

8 (12) "Affected party" means a wholesaler, brewer, master
9 distributor, successor brewer, or any person that is a party to
10 an agreement.

11 (13) "Signs" means signs described in Section 6-6 of the
12 Liquor Control Act of 1934.

13 (14) "Advertising materials" means advertising materials
14 described in Section 6-6 of the Liquor Control Act of 1934.

15 (Source: P.A. 90-373, eff. 8-14-97; 91-247, eff. 7-22-99.)

16 (815 ILCS 720/5) (from Ch. 43, par. 305)

17 Sec. 5. Prohibited conduct. No brewer shall:

18 (1) Induce or coerce, or attempt to induce or coerce,
19 any wholesaler to engage in any illegal act or course of
20 conduct either by threatening to amend, modify, cancel,
21 terminate, or refuse to renew any agreement existing
22 between the brewer and the wholesaler, or by any other
23 means.

24 (2) Require a wholesaler to assent to any unreasonable
25 requirement, condition, understanding or term or an

1 agreement prohibiting a wholesaler from selling the
2 product of any other brewer or brewers.

3 (3) Directly or indirectly fix or maintain the price at
4 which a wholesaler may resell beer.

5 (4) Fail to provide to each wholesaler of its brands a
6 written contract which embodies the brewer's agreement
7 with its wholesalers and conforms to the provisions of this
8 Act.

9 (5) Require any wholesaler to accept delivery of any
10 beer, signs, advertising materials, or any other item or
11 commodity which has not been ordered by the wholesaler, or
12 require any wholesaler to accept a common carrier for
13 delivery of beer into this State unless the wholesaler
14 consents to the common carrier. In the event a brewer
15 adopts a uniform practice of delivering beer into this
16 State to the premises of all licensed wholesalers, the
17 brewer may select the common carrier in this State.

18 (6) Require a wholesaler without the wholesaler's
19 approval to participate in an arrangement for the payment
20 or crediting by an electronic fund transfer transaction for
21 any item or commodity other than beer or to access a
22 wholesaler's account for any item or commodity other than
23 beer.

24 (7) Require a wholesaler to assent to any requirement
25 prohibiting the wholesaler from disposing, after notice to
26 the brewer, of a product which has been deemed salvageable

1 by a local or State health authority. Nothing herein shall
2 prohibit the brewer from having the first right to purchase
3 the salvageable product from the wholesaler at a price not
4 to exceed the original cost of the product or to
5 subsequently repurchase the product from the insurance
6 company or salvage company.

7 (8) Refuse to approve or require a wholesaler to
8 terminate a manager or successor manager without good
9 cause. A brewer has good cause only if the person
10 designated as manager or successor manager by the
11 wholesaler fails to meet reasonable standards and
12 qualifications.

13 (9) Present an agreement to a wholesaler that attempts
14 to waive compliance with any provision of this Act or that
15 requires the wholesaler to waive compliance with any
16 provision of this Act. No brewer shall induce or coerce, or
17 attempt to induce or coerce, any wholesaler to assent to
18 any agreement, amendment, renewal, or replacement
19 agreement that does not comply with this Act and the laws
20 of this State.

21 (10) Terminate or attempt to terminate an agreement on
22 the basis that the wholesaler refuses to purchase signs or
23 advertising materials or any quantity or types thereof.

24 (11) Discriminate against a wholesaler who has entered
25 into a contract relative to signs or advertising materials
26 by not making signs or advertising materials or any

1 quantity or types thereof available to the wholesaler when
2 the brewer makes available such signs or advertising
3 materials to other similarly situated wholesalers in this
4 State.

5 (12) Present an agreement requiring the wholesaler to
6 arbitrate all disputes without offering the wholesaler in
7 writing the opportunity to reject arbitration and elect to
8 resolve all disputes by maintaining a civil suit in
9 accordance with this Act.

10 (13) Fail to assign brand extensions to a wholesaler
11 who has been granted the territory to the brand from which
12 the brand extension resulted and agrees to accept the brand
13 extension; however, this requirement does not apply if the
14 wholesaler is not in compliance with the agreement at the
15 time the brewer offers the brand extension to the
16 wholesaler.

17 No brewer who, pursuant to an agreement with a wholesaler
18 which does not violate antitrust laws, has designated a sales
19 territory for which the wholesaler is exclusively ~~primarily~~
20 responsible or in which the wholesaler is required to
21 concentrate its efforts, shall enter into an agreement with any
22 other wholesaler for the purpose of establishing an additional
23 wholesaler for the brewer's brand, ~~or~~ brands, or brand
24 extension in the territory. ~~in all or part of the same~~
25 ~~territory.~~

26 No wholesaler who, pursuant to an agreement is granted a

1 sales territory for which it shall be exclusively ~~primarily~~
2 responsible or in which it is required to concentrate its
3 efforts, shall make any sale or delivery of beer to any retail
4 licensee whose place of business is not within the territory
5 granted to the wholesaler.

6 (Source: P.A. 90-373, eff. 8-14-97; 91-247, eff. 7-22-99.)

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.