

SB2754



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2754

Introduced 2/15/2008, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

815 ILCS 720/1.1

from Ch. 43, par. 301.1

Amends the Beer Industry Fair Dealing Act. Changes the definition of "successor brewer" to "any person who in any way obtains the distribution rights that a brewer, non-resident dealer, foreign importer, or master distributor once had to manufacture or distribute a brand or brands of beer whether by merger, purchase of corporate shares, purchase of assets, or any other arrangement, including but not limited to any arrangements transferring the ownership or control of the trademark, brand or name of the brand". Effective immediately.

LRB095 15970 WGH 41982 b

A BILL FOR

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, 5, and 7 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, non-resident
6 dealer, foreign importer, or master distributor once had to
7 manufacture or distribute a brand or brands of beer whether by
8 merger, purchase of corporate shares, purchase of assets, or
9 any other arrangement, including but not limited to any
10 arrangements transferring the ownership or control of the
11 trademark, brand or name of the brand.

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

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

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

1 this Act or in violation of any law or regulation.

2 (10) "Good faith" means honesty in fact and the observance
3 of reasonable commercial standards of fair dealing in the trade
4 as defined and interpreted under Section 2-103 of the Uniform
5 Commercial Code.

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

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

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

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

18 (Source: P.A. 95-240, eff. 8-17-07.)

19 Section 99. Effective date. This Act takes effect upon
20 becoming law.