



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0773

Introduced 2/9/2009, by Rep. Lou Lang

SYNOPSIS AS INTRODUCED:

815 ILCS 720/1.1	from Ch. 43, par. 301.1
815 ILCS 720/5	from Ch. 43, par. 305

Amends the Beer Industry Fair Dealing Act. Expands the list of prohibited conduct under the Act, as it applies to brewers, to include coercing a wholesaler to sign an agreement by threatening to refuse approval for the wholesaler's business; terminating an agreement because the wholesaler fails to agree to a renewal agreement; and presenting an agreement to the wholesaler that grants the brewer the unilateral right to amend the agreement without the wholesaler's consent. Provides that an agreement between a brewer and wholesaler must state and provide that the agreement is governed by the Beer Industry Fair Dealing Act and other matters. Changes the definition of the term "territory" or "sales territory" to mean the exclusive geographic area (rather than the geographical area) of primary sales responsibility designated by the agreement between a wholesaler and brewer for any brand, brands, or brand extensions (rather than brand or brands) of the brewer. Further adds that the "territory" or "sales territory" designated by the agreement may not be designated by address or specific location unless such specific address or location is part of a general and broad territory or sales territory description. Effective immediately.

LRB096 08405 KTG 18517 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, 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 exclusive
17 geographic area of primary sales responsibility designated by
18 the an agreement between a wholesaler and brewer for any brand,
19 or brands, or brand extensions of the brewer. The "territory"
20 or "sales territory" designated by the agreement may not be
21 designated by address or specific location unless such specific
22 address or location is part of a general and broad territory or
23 sales territory description. The designation of a territory or
24 sales territory in violation of this subsection is prohibited
25 by this Act and deemed discriminatory.

26 (9) "Good cause" exists if the wholesaler or affected party

1 has failed to comply with essential and reasonable requirements
2 imposed upon the wholesaler or affected party by the agreement.
3 The requirements may not be discriminating either by their
4 terms or in the methods of their enforcement as compared with
5 requirements imposed on other similarly situated wholesalers
6 by the brewer. The requirements may not be inconsistent with
7 this Act or in violation of any law or regulation.

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

12 (11) "Reasonable standards and qualifications" means those
13 criteria applied by the brewer to similarly situated
14 wholesalers during a period of 24 months before the proposed
15 change in manager or successor manager of the wholesaler's
16 business.

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

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

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

24 (Source: P.A. 95-240, eff. 8-17-07; 95-789, eff. 8-7-08.)

25 (815 ILCS 720/5) (from Ch. 43, par. 305)

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

2 (1) Induce or coerce, or attempt to induce or coerce,
3 any wholesaler to engage in any illegal act or course of
4 conduct either by threatening to amend, modify, cancel,
5 terminate, or refuse to renew any agreement existing
6 between the brewer and the wholesaler, or by any other
7 means.

8 (2) Require a wholesaler to assent to any unreasonable
9 requirement, condition, understanding or term or an
10 agreement prohibiting a wholesaler from selling the
11 product of any other brewer or brewers.

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

14 (4) Fail to provide to each wholesaler of its brands a
15 written contract which embodies the brewer's agreement
16 with its wholesalers and conforms to the provisions of this
17 Act.

18 (5) Require any wholesaler to accept delivery of any
19 beer, signs, advertising materials, or any other item or
20 commodity which has not been ordered by the wholesaler, or
21 require any wholesaler to accept a common carrier for
22 delivery of beer into this State unless the wholesaler
23 consents to the common carrier. In the event a brewer
24 adopts a uniform practice of delivering beer into this
25 State to the premises of all licensed wholesalers, the
26 brewer may select the common carrier in this State.

1 (6) Require a wholesaler without the wholesaler's
2 approval to participate in an arrangement for the payment
3 or crediting by an electronic fund transfer transaction for
4 any item or commodity other than beer or to access a
5 wholesaler's account for any item or commodity other than
6 beer.

7 (7) Require a wholesaler to assent to any requirement
8 prohibiting the wholesaler from disposing, after notice to
9 the brewer, of a product which has been deemed salvageable
10 by a local or State health authority. Nothing herein shall
11 prohibit the brewer from having the first right to purchase
12 the salvageable product from the wholesaler at a price not
13 to exceed the original cost of the product or to
14 subsequently repurchase the product from the insurance
15 company or salvage company.

16 (8) Refuse to approve or require a wholesaler to
17 terminate a manager or successor manager without good
18 cause. A brewer has good cause only if the person
19 designated as manager or successor manager by the
20 wholesaler fails to meet reasonable standards and
21 qualifications.

22 (9) Present an agreement to a wholesaler that attempts
23 to waive compliance with any provision of this Act or that
24 requires the wholesaler to waive compliance with any
25 provision of this Act. No brewer shall induce or coerce, or
26 attempt to induce or coerce, any wholesaler to assent to

1 any agreement, amendment, renewal, or replacement
2 agreement that does not comply with this Act and the laws
3 of this State.

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

7 (11) Discriminate against a wholesaler who has entered
8 into a contract relative to signs or advertising materials
9 by not making signs or advertising materials or any
10 quantity or types thereof available to the wholesaler when
11 the brewer makes available such signs or advertising
12 materials to other similarly situated wholesalers in this
13 State.

14 (12) Present an agreement requiring the wholesaler to
15 arbitrate all disputes without offering the wholesaler in
16 writing the opportunity to reject arbitration and elect to
17 resolve all disputes by maintaining a civil suit in
18 accordance with this Act.

19 (13) Fail to assign brand extensions to a wholesaler
20 who has been granted the territory to the brand from which
21 the brand extension resulted and agrees to accept the brand
22 extension; however, this requirement does not apply if the
23 wholesaler is not in compliance with the agreement at the
24 time the brewer offers the brand extension to the
25 wholesaler.

26 (14) Coerce or attempt to coerce a wholesaler to sign a

1 renewal agreement, replacement agreement, or an amendment
2 to an agreement by threatening to refuse to approve or
3 delay issuing an approval for the sale of a wholesaler's
4 business, or to refuse to approve or delay issuing an
5 approval for a prospective purchase of another
6 wholesaler's business.

7 (15) Terminate or attempt to terminate an agreement on
8 the basis that the wholesaler fails to agree or consent to
9 a renewal agreement or replacement agreement or an
10 amendment to an agreement.

11 (16) Present an agreement to a wholesaler containing a
12 provision granting the brewer the unilateral right to amend
13 the agreement without the wholesaler's consent at the time
14 such amendment is presented to the wholesaler. A brewer may
15 amend an agreement at any time if such amendment does not
16 materially and adversely affect the wholesaler and such
17 amendment is effective as to all wholesalers of the brewer
18 in the State.

19 Notwithstanding any other provision, the agreement must
20 state and provide that the agreement shall be governed by the
21 provisions of the Beer Industry Fair Dealing Act and that the
22 Beer Industry Fair Dealing Act is incorporated into the
23 agreement and shall be deemed to be a part hereof and any
24 provision of the agreement contrary to, inconsistent with, or
25 in conflict with the Beer Industry Fair Dealing Act is void and
26 unenforceable and the applicable provisions of the Beer

1 Industry Fair Dealing Act shall govern and be controlling. The
2 agreement must further state and provide that any provision of
3 the agreement requiring or attempting to require the wholesaler
4 to waive compliance is void, unenforceable, and without legal
5 effect and the applicable provisions of the Beer Industry Fair
6 Dealing Act shall govern and be controlling. If an agreement
7 presented to the wholesaler does not contain this provision the
8 brewer must furnish an executed Illinois addendum to the
9 wholesaler stating the agreement shall be governed by the
10 provisions of the Beer Industry Fair Dealing Act and that the
11 Beer Industry Fair Dealing Act is incorporated into the
12 agreement and shall be deemed to be a part hereof and any
13 provision of the agreement contrary to, inconsistent with, or
14 in conflict with the Beer Industry Fair Dealing Act is void and
15 unenforceable and the applicable provisions of the Beer
16 Industry Fair Dealing Act shall govern and be controlling.

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 responsible
20 or in which the wholesaler is required to concentrate its
21 efforts, shall enter into an agreement with any other
22 wholesaler for the purpose of establishing an additional
23 wholesaler for the brewer's brand, brands, or brand extension
24 in the territory.

25 No wholesaler who, pursuant to an agreement is granted a
26 sales territory for which it shall be exclusively responsible

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

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

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