

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, 2, 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 720/2) (from Ch. 43, par. 302)

1 Sec. 2. Purposes. The purposes and scope of this Act are:

2 (A) This Act is promulgated pursuant to authority of the
3 State under the provisions of the Twenty-First Amendment to the
4 United States Constitution to promote the public's interest in
5 fair, efficient and competitive distribution of malt beverage
6 products by regulation and encouragement of brewer and
7 wholesaler vendors to conduct their business relations toward
8 these ends by:

9 (i) assuring the beer wholesaler is free to manage its
10 business enterprise, including the wholesaler's right to
11 independently establish its selling prices; and

12 (ii) assuring the brewer and the public of service from
13 wholesalers who will devote reasonable efforts and
14 resources to sales and distribution of all the brewer's
15 products, which wholesaler has been granted the right to
16 sell and distribute and maintain satisfactory sales
17 levels.

18 (B) This Act shall be incorporated into and shall be deemed
19 a part of every agreement between brewers and wholesalers and
20 shall govern all relations between brewers and their
21 wholesalers to the full extent consistent with the
22 constitutions and laws of this State and the United States and
23 any provision of this Act shall supersede any conflicting
24 provision of the agreement.

25 (Source: P.A. 91-247, eff. 7-22-99.)

1 (815 ILCS 720/5) (from Ch. 43, par. 305)

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

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

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

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

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

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

1 brewer may select the common carrier in this State.

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

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

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

23 (9) Present an agreement to a wholesaler that attempts
24 to waive compliance with any provision of this Act or that
25 requires the wholesaler to waive compliance with any
26 provision of this Act. A wholesaler entering into an

1 agreement containing provisions in conflict with this Act
2 shall not be deemed to waive compliance with any provision
3 of this Act. No brewer shall induce or coerce, or attempt
4 to induce or coerce, any wholesaler to assent to any
5 agreement, amendment, renewal, or replacement agreement
6 that does not comply with this Act and the laws of this
7 State.

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

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

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

23 (13) Fail to assign brand extensions to a wholesaler
24 who has been granted the territory to the brand from which
25 the brand extension resulted and agrees to accept the brand
26 extension; however, this requirement does not apply if the

1 wholesaler is not in compliance with the agreement at the
2 time the brewer offers the brand extension to the
3 wholesaler.

4 (14) Terminate, cancel, or non-renew or attempt to
5 terminate, cancel, or non-renew an agreement on the basis
6 that the wholesaler fails to agree or consent to an
7 amendment at the time such amendment is presented to the
8 wholesaler. A brewer may amend an agreement including
9 operating standards at any time without the wholesaler's
10 consent if such amendment does not materially,
11 substantially, and adversely affect the wholesaler and
12 such amendment is effective as to all wholesalers of the
13 brewer in the State.

14 (15) Coerce or attempt to coerce a wholesaler to sign a
15 renewal agreement, replacement agreement, or an amendment
16 to an agreement by threatening to refuse to approve or
17 delay issuing an approval for the sale of a wholesaler's
18 business.

19 The agreement must state and provide that the agreement
20 shall be governed by all applicable provisions of State law and
21 that such State law is incorporated into the agreement and
22 shall be deemed to be a part hereof and shall supersede any
23 provision of the agreement in conflict with such State law and
24 the applicable provisions of such State law shall govern and be
25 controlling. If an agreement presented to the wholesaler does
26 not contain this provision, the brewer must furnish an executed

1 Illinois addendum to the wholesaler stating the agreement shall
2 be governed by all applicable provisions of State law and that
3 such State law is incorporated into the agreement and shall be
4 deemed to be a part hereof and shall supersede any provision of
5 the agreement in conflict with such State law and shall govern
6 and be controlling.

7 No brewer who, pursuant to an agreement with a wholesaler
8 which does not violate antitrust laws, has designated a sales
9 territory for which the wholesaler is exclusively responsible
10 or in which the wholesaler is required to concentrate its
11 efforts, shall enter into an agreement with any other
12 wholesaler for the purpose of establishing an additional
13 wholesaler for the brewer's brand, brands, or brand extension
14 in the territory.

15 No wholesaler who, pursuant to an agreement is granted a
16 sales territory for which it shall be exclusively responsible
17 or in which it is required to concentrate its efforts, shall
18 make any sale or delivery of beer to any retail licensee whose
19 place of business is not within the territory granted to the
20 wholesaler.

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

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.