

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 transferring  
15 wholesaler to sign a renewal agreement, replacement  
16 agreement, or an amendment to an agreement by threatening  
17 to refuse to approve or delay issuing an approval for the  
18 sale or transfer of a wholesaler's business.

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

1 shall be governed by all applicable provisions of State law,  
2 and that such State law is incorporated into the agreement,  
3 shall be deemed to be a part hereof, shall supercede any  
4 provision of the agreement in conflict with such State law, and  
5 shall govern and control.

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

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

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

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