



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB1282

Introduced 2/10/2009, by Sen. Terry Link

#### SYNOPSIS AS INTRODUCED:

235 ILCS 5/6-9  
815 ILCS 720/7

from Ch. 43, par. 126  
from Ch. 43, par. 307

Amends the Liquor Control Act of 1934. Contains language concerning registration requirements for non-resident dealers and foreign importers of alcoholic liquors who are not manufacturers. Amends the Beer Industry Fair Dealing Act. Provides that provisions concerning reasonable compensation and arbitration apply only if the brewer agrees to pay reasonable compensation as defined under the Act and the total annual volume of all beer products supplied by a brewer to a wholesaler pursuant to agreements between such brewer and wholesaler represents 10% (rather than 20%) or less of the total annual volume of the wholesaler's business for all beer products supplied by all brewers, provided that such 10% volume of all beer products supplied by the wholesaler to the retailer does not exceed 10% of annual gross receipts. Makes other changes. Effective immediately.

LRB096 08404 KTG 18516 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 Liquor Control Act of 1934 is amended by  
5 changing Section 6-9 as follows:

6 (235 ILCS 5/6-9) (from Ch. 43, par. 126)

7 Sec. 6-9. Registration of trade marks; sale within  
8 geographical area; delivery to authorized persons. The  
9 Legislature hereby finds and declares that for purposes of  
10 ensuring the preservation and enhancement of interbrand  
11 competition in the alcoholic liquor industry within the State,  
12 ensuring that importation and distribution of alcoholic liquor  
13 in the State will be subject to thorough and inexpensive  
14 monitoring by the State, reducing the importation of illicit or  
15 untaxed alcoholic liquor into the State, excluding misbranded  
16 alcoholic liquor products from the State, providing incentives  
17 to distributors to service and sell to larger numbers of retail  
18 licensees in the geographic area where such distributors are  
19 engaged in business, and reducing the amount of spoiled and  
20 overaged alcoholic liquor products sold to consumers, it is  
21 necessary to restrict the purchase of alcoholic liquors at  
22 wholesale in the State to those persons selected by the  
23 manufacturer, distributor, importing distributor or foreign

1 importer who owns or controls the trade mark, brand or name of  
2 the alcoholic liquor products sold to such persons, and to  
3 restrict the geographic area or areas within which such persons  
4 sell such alcoholic liquor at wholesale, as provided in this  
5 Section.

6 Each manufacturer, non-resident dealer, distributor,  
7 importing distributor, or foreign importer who owns or controls  
8 the trade mark, brand or name of any alcoholic liquor shall  
9 register with the State Commission, in the Chicago office, on  
10 or before the effective date, the name of each person to whom  
11 such manufacturer, non-resident dealer, distributor, importing  
12 distributor, or foreign importer grants the right to sell at  
13 wholesale in this State any such alcoholic liquor, specifying  
14 the particular trade mark, brand or name of alcoholic liquor as  
15 to which such right is granted, the geographical area or areas  
16 for which such right is granted and the period of time for  
17 which such rights are granted to such person. Each  
18 manufacturer, non-resident dealer, distributor or importing  
19 distributor, or foreign importer who is required to register  
20 under this Section must furnish a copy of the registration  
21 statement at the time of appointment to the person who has been  
22 granted the right to sell alcoholic liquor at wholesale.  
23 However, if a person who has been appointed the right to sell  
24 alcoholic liquor at wholesale does not receive a copy of the  
25 registration statement as required under this Section, such  
26 person may file a registration statement with the State

1 Commission, provided that the person furnishes a copy of that  
2 registration statement to the manufacturer, non-resident  
3 dealer, distributor, importing distributor, or foreign  
4 importer within 30 days of filing the registration statement.

5 The registration statement shall state:

6 (1) the name of the person appointed;

7 (2) the name of the manufacturer, non-resident dealer,  
8 distributor, importing distributor, or foreign importer from  
9 whom the person received the right to sell alcoholic liquor;

10 (3) the particular trade mark, brand, or name of alcoholic  
11 liquor as to which the right to sell at wholesale is granted;  
12 and

13 (4) the geographical areas for which the right to sell at  
14 wholesale is granted.

15 Such manufacturer, non-resident dealer, distributor,  
16 importing distributor, or foreign importer may grant the right  
17 to sell at wholesale any trade mark, brand or name of any  
18 alcoholic liquor in any geographical area to more than one  
19 person. If the registration is received after the effective  
20 date, the Commission shall treat the date the registration was  
21 received in the Chicago office as the effective date. Such  
22 registration shall be made on a form prescribed by the State  
23 Commission and the State Commission may require such  
24 registration to be on a form provided by it.

25 A non-resident dealer or foreign importer who is not a  
26 manufacturer shall file the registration statement jointly

1 with the manufacturer identifying the person authorized by the  
2 manufacturer to sign the registration statement on behalf of  
3 the manufacturer.

4 No such registration shall be made in any other manner than  
5 as is provided in this Section and only those persons  
6 registered by the manufacturer, non-resident dealer,  
7 distributor, importing distributor or foreign importer, shall  
8 have the right to sell at wholesale in this State, the brand of  
9 alcoholic liquor specified on the registration form.

10 However, a licensed Illinois distributor who has not been  
11 registered to sell a brand of alcoholic liquor, but for a  
12 period of 2 years prior to November 8, 1979 has been engaged in  
13 the purchase of a brand for resale from a licensed Illinois  
14 distributor who has the right to sell that brand at wholesale,  
15 may continue to purchase and resell the brand at wholesale, and  
16 may purchase from the same distributor and resell at wholesale  
17 any new brands of the same manufacturer, provided that:

18 (1) Within 60 days after November 8, 1979 he identifies  
19 the brand which he so purchased to the State Commission and  
20 the Commission within 30 days thereafter verifies that the  
21 purchases have occurred;

22 (2) Thereafter, he notifies the State Commission in  
23 writing of any brands of the same manufacturer which he  
24 wishes to purchase from the same distributor that were not  
25 available for distribution on or before November 8, 1979,  
26 and that the Commission within 30 days of such notification

1           verifies that the brand is a new brand of the same  
2           manufacturer, and that the same licensed Illinois  
3           distributor has the right to sell the new brand at  
4           wholesale;

5           (3) His licensed business address is within the  
6           geographical area for which the licensed Illinois  
7           distributor from whom the purchases are made has the right  
8           to sell said brand or brands of alcoholic liquor; and

9           (4) His sales are made within the geographical area for  
10          which the licensed Illinois distributor from whom the  
11          purchases are made has the right to sell the brand or  
12          brands of alcoholic liquor and only to retail licensees  
13          whose licensed premises are located within the  
14          aforementioned geographical area.

15          No person to whom such right is granted shall sell at  
16          wholesale in this State any alcoholic liquor bearing such trade  
17          mark, brand or name outside of the geographical area for which  
18          such person holds such selling right, as registered with the  
19          State Commission, nor shall he sell such alcoholic liquor  
20          within such geographical area to a retail licensee if the  
21          premises specified in such retailer's license are located  
22          outside such geographical area. Any licensed Illinois  
23          distributor who has not been granted the right to sell any  
24          alcoholic liquor at wholesale and is purchasing alcoholic  
25          liquor from a person who has been granted the right to sell at  
26          wholesale may sell and deliver only to retail licensees whose

1 licensed premises are within the same geographical area as the  
2 person who has been granted the right to sell at wholesale.

3 No manufacturer, importing distributor, distributor,  
4 non-resident dealer, or foreign importer shall sell or deliver  
5 any package containing alcoholic liquor manufactured or  
6 distributed by him for resale, unless the person to whom such  
7 package is sold or delivered is authorized to receive such  
8 package in accordance with the provisions of this Act.

9 (Source: P.A. 92-105, eff. 1-1-02.)

10 Section 10. The Beer Industry Fair Dealing Act is amended  
11 by changing Section 7 as follows:

12 (815 ILCS 720/7) (from Ch. 43, par. 307)

13 Sec. 7. Reasonable compensation.

14 (1) Subject to the right of any party to an agreement to  
15 pursue any remedy provided in Section 9, any ~~Any~~ brewer that  
16 cancels, terminates or fails to renew any agreement, or  
17 unlawfully denies approval of, or unreasonably withholds  
18 consent, to any assignment, transfer or sale of a wholesaler's  
19 business assets or voting stock or other equity securities,  
20 except as provided in this Act, shall pay the wholesaler with  
21 which it has an agreement pursuant to this Act reasonable  
22 compensation for the fair market value of the wholesaler's  
23 business with relation to the affected brand or brands. The  
24 fair market value of the wholesaler's business shall include,

1 but not be limited to, its goodwill, if any.

2 (1.5) The provisions of this subsection (1.5) shall only  
3 apply if the brewer agrees to pay reasonable compensation as  
4 defined in subsection (1) and ~~when~~ the total annual volume of  
5 all beer products supplied by a brewer to a wholesaler pursuant  
6 to agreements between such brewer and wholesaler represents 10%  
7 ~~20%~~ or less of the total annual volume of the wholesaler's  
8 business for all beer products supplied by all brewers,  
9 provided that such 10% volume of all beer products supplied by  
10 the wholesaler to the retailer does not exceed 10% of annual  
11 gross receipts. For purposes of this subsection (1.5) only,  
12 "annual volume" means the volume of beer products sold by the  
13 wholesaler in the 12-month period immediately preceding  
14 receipt of the brewer's written offer pursuant to this  
15 subsection (1.5) and "annual gross receipts" means the revenues  
16 received by the wholesaler from beer products sold by the  
17 wholesaler in the 12-month period immediately preceding  
18 receipt of brewer's written offer pursuant to this subsection  
19 (1.5).

20 If a brewer is required to pay reasonable compensation as  
21 described in subsection (1) and the question of reasonable  
22 compensation is the only issue between the parties, the brewer  
23 shall, in good faith, make a written offer to pay reasonable  
24 compensation. The wholesaler shall have 30 days from receipt of  
25 the written offer to accept or reject the brewer's offer.  
26 Failure to respond, in writing, to the written offer shall



1 constitute rejection of the offer to pay reasonable  
2 compensation. If the wholesaler, in writing, accepts the  
3 written offer, the wholesaler shall surrender the affected  
4 brand or brands to the brewer at the time payment is received  
5 from the brewer. If the wholesaler does not, in writing, accept  
6 the brewer's written offer, either party may elect to submit  
7 the determination of reasonable compensation to expedited  
8 binding arbitration. If one party notifies the other party in  
9 writing that it elects expedited binding arbitration, the other  
10 party has 10 days from receipt of the notification to elect  
11 expedited binding arbitration or to reject the arbitration in  
12 writing. Failure to elect arbitration shall constitute  
13 rejection of the offer to arbitrate.

14 (A) If the parties agree to expedited binding  
15 arbitration, the arbitration shall be subject to the  
16 expedited process under the commercial rules of the  
17 American Arbitration Association. The arbitration shall be  
18 concluded within 90 days after the parties agree to  
19 expedited binding arbitration under this Section, unless  
20 extended by the arbitrator or one of the parties. The  
21 wholesaler shall retain the affected brand or brands during  
22 the period of arbitration, at the conclusion of which the  
23 wholesaler shall surrender the affected brand or brands to  
24 the brewer upon payment of the amount determined to be  
25 reasonable compensation, provided the wholesaler shall  
26 transfer the affected brand or brands to the brewer after

1           90 days if the arbitration proceedings are extended beyond  
2           the 90 day limit at the request of the wholesaler.  
3           Arbitration costs shall be paid one-half by the wholesaler  
4           and one-half by the brewer. The award of the arbitrator  
5           shall be final and binding on the parties.

6           (B) If the brewer elects expedited binding arbitration  
7           but the wholesaler rejects the offer to arbitrate:

8           (i) The wholesaler may accept, in writing, any  
9           written offer previously made by the brewer. If the  
10          wholesaler selects this option, the wholesaler must  
11          surrender the affected brand or brands to the brewer at  
12          the time payment is received. If the wholesaler  
13          believes that the amount paid by the brewer is less  
14          than reasonable compensation under subsection (1), the  
15          wholesaler may bring a proceeding under subsection (2)  
16          for the difference, but may not proceed under  
17          subsection (3) of Section 9; or

18          (ii) The wholesaler may proceed against the brewer  
19          under Section 9, provided the wholesaler must  
20          surrender the affected brand or brands to the brewer if  
21          a proceeding under Section 9 has not been initiated  
22          within 90 days after the wholesaler rejects the offer  
23          to arbitrate. Upon determination of reasonable  
24          compensation pursuant to Section 9, the brewer shall  
25          pay the wholesaler the amount so determined. Until  
26          receiving payment from the brewer of the amount so

1           determined, the wholesaler shall retain the affected  
2           brand or brands. If (a) the wholesaler retains the  
3           affected brand or brands for a period of 2 years after  
4           the wholesaler rejects the offer to arbitrate, (b) the  
5           amount of reasonable compensation has not been  
6           determined, and (c) an injunction has not been issued,  
7           the brewer shall, in good faith, make a payment of  
8           reasonable compensation to the wholesaler. Upon  
9           receipt of this payment, the wholesaler must surrender  
10          the affected brand or brands to the brewer, provided  
11          that such surrender shall not affect the brewer's  
12          obligation to pay all amounts ultimately determined  
13          due to the wholesaler under this Act.

14          (C) If the wholesaler elects expedited binding  
15          arbitration but the brewer rejects, the brewer may proceed  
16          under Section 9 for the purpose of determining reasonable  
17          compensation. Upon determination of reasonable  
18          compensation pursuant to Section 9, the brewer shall pay  
19          the wholesaler the amount so determined. Until receiving  
20          payment from the brewer of the amount so determined, the  
21          wholesaler shall retain the affected brand or brands. If  
22          (a) the brewer initiates a proceeding under Section 9  
23          within 90 days after the wholesaler rejects the offer to  
24          arbitrate, (b) the wholesaler retains the affected brand or  
25          brands for a period of 2 years from the date the wholesaler  
26          rejects the offer to arbitrate, (c) the amount of

1 reasonable compensation has not been determined, and (d) an  
2 injunction has not been issued, the brewer shall, in good  
3 faith, make a payment of reasonable compensation to the  
4 wholesaler. If, however, the brewer fails to ship or make  
5 available brands ordered by the wholesaler prior to receipt  
6 of payment, the wholesaler shall be entitled to injunctive  
7 relief and attorneys' fees and shall subject the brewer to  
8 punitive damages. Upon receipt of this payment, the  
9 wholesaler must surrender the affected brand or brands to  
10 the brewer, provided that such surrender shall not affect  
11 the brewer's obligation to pay all amounts ultimately  
12 determined due to the wholesaler under this Act.

13 (2) Except as otherwise provided in subsection (1.5), in  
14 the event that the brewer and the beer wholesaler are unable to  
15 mutually agree on the reasonable compensation to be paid for  
16 the value of the wholesaler's business, as defined in this Act,  
17 either party may maintain a civil suit as provided in Section 9  
18 or the matter may, by mutual agreement of the parties, be  
19 submitted to a neutral arbitrator to be selected by the parties  
20 and the claim settled in accordance with the rules provided by  
21 the American Arbitration Association. Arbitration costs shall  
22 be paid one-half by the wholesaler and one-half by the brewer.  
23 The award of the arbitrator shall be final and binding on the  
24 parties.

25 (Source: P.A. 89-716, eff. 2-21-97.)

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.