

**SB3399**



**97TH GENERAL ASSEMBLY**

**State of Illinois**

**2011 and 2012**

**SB3399**

Introduced 2/7/2012, by Sen. Antonio Muñoz

**SYNOPSIS AS INTRODUCED:**

815 ILCS 720/7

from Ch. 43, par. 307

Amends the Beer Industry Fair Dealing Act. Provides that certain compensation requirements applicable to the termination of an agreement between a brewer and a wholesaler apply if the total annual volume of beer products supplied by the brewer to the wholesaler represents 10% or less, rather than 15% or less, of the wholesaler's business for all beer products supplied by all brewers. Effective immediately.

LRB097 18875 JLS 64113 b

**A BILL FOR**

1 AN ACT concerning beer wholesalers.

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 Section 7 as follows:

6 (815 ILCS 720/7) (from Ch. 43, par. 307)

7 Sec. 7. Reasonable compensation.

8 (1) Subject to the right of any party to an agreement to  
9 pursue any remedy provided in Section 9, any brewer that  
10 cancels, terminates or fails to renew any agreement, or  
11 unlawfully denies approval of, or unreasonably withholds  
12 consent, to any assignment, transfer or sale of a wholesaler's  
13 business assets or voting stock or other equity securities,  
14 except as provided in this Act, shall pay the wholesaler with  
15 which it has an agreement pursuant to this Act reasonable  
16 compensation for the fair market value of the wholesaler's  
17 business with relation to the affected brand or brands. The  
18 fair market value of the wholesaler's business shall include,  
19 but not be limited to, its goodwill, if any.

20 (1.5) The provisions of this subsection (1.5) shall only  
21 apply if the brewer agrees to pay reasonable compensation as  
22 defined in subsection (1) and the total annual volume of all  
23 beer products supplied by a brewer to a wholesaler pursuant to

1 agreements between such brewer and wholesaler represents 10%  
2 ~~15%~~ or less of the total annual volume of the wholesaler's  
3 business for all beer products supplied by all brewers. For  
4 purposes of this subsection (1.5) only, "annual volume" means  
5 the volume of beer products sold by the wholesaler in the  
6 12-month period immediately preceding receipt of the brewer's  
7 written offer pursuant to this subsection (1.5).

8 If a brewer is required to pay reasonable compensation as  
9 described in subsection (1) and the question of reasonable  
10 compensation is the only issue between the parties, the brewer  
11 shall, in good faith, make a written offer to pay reasonable  
12 compensation. The wholesaler shall have 30 days from receipt of  
13 the written offer to accept or reject the brewer's offer.  
14 Failure to respond, in writing, to the written offer shall  
15 constitute rejection of the offer to pay reasonable  
16 compensation. If the wholesaler, in writing, accepts the  
17 written offer, the wholesaler shall surrender the affected  
18 brand or brands to the brewer at the time payment is received  
19 from the brewer. If the wholesaler does not, in writing, accept  
20 the brewer's written offer, either party may elect to submit  
21 the determination of reasonable compensation to expedited  
22 binding arbitration. If one party notifies the other party in  
23 writing that it elects expedited binding arbitration, the other  
24 party has 10 days from receipt of the notification to elect  
25 expedited binding arbitration or to reject the arbitration in  
26 writing. Failure to elect arbitration shall constitute

1 rejection of the offer to arbitrate.

2 (A) If the parties agree to expedited binding  
3 arbitration, the arbitration shall be subject to the  
4 expedited process under the commercial rules of the  
5 American Arbitration Association. The arbitration shall be  
6 concluded within 90 days after the parties agree to  
7 expedited binding arbitration under this Section, unless  
8 extended by the arbitrator or one of the parties. The  
9 wholesaler shall retain the affected brand or brands during  
10 the period of arbitration, at the conclusion of which the  
11 wholesaler shall surrender the affected brand or brands to  
12 the brewer upon payment of the amount determined to be  
13 reasonable compensation, provided the wholesaler shall  
14 transfer the affected brand or brands to the brewer after  
15 90 days if the arbitration proceedings are extended beyond  
16 the 90 day limit at the request of the wholesaler.  
17 Arbitration costs shall be paid one-half by the wholesaler  
18 and one-half by the brewer. The award of the arbitrator  
19 shall be final and binding on the parties.

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

22 (i) The wholesaler may accept, in writing, any  
23 written offer previously made by the brewer. If the  
24 wholesaler selects this option, the wholesaler must  
25 surrender the affected brand or brands to the brewer at  
26 the time payment is received. If the wholesaler

1 believes that the amount paid by the brewer is less  
2 than reasonable compensation under subsection (1), the  
3 wholesaler may bring a proceeding under subsection (2)  
4 for the difference, but may not proceed under  
5 subsection (3) of Section 9; or

6 (ii) The wholesaler may proceed against the brewer  
7 under Section 9, provided the wholesaler must  
8 surrender the affected brand or brands to the brewer if  
9 a proceeding under Section 9 has not been initiated  
10 within 90 days after the wholesaler rejects the offer  
11 to arbitrate. Upon determination of reasonable  
12 compensation pursuant to Section 9, the brewer shall  
13 pay the wholesaler the amount so determined. Until  
14 receiving payment from the brewer of the amount so  
15 determined, the wholesaler shall retain the affected  
16 brand or brands. If (a) the wholesaler retains the  
17 affected brand or brands for a period of 2 years after  
18 the wholesaler rejects the offer to arbitrate, (b) the  
19 amount of reasonable compensation has not been  
20 determined, and (c) an injunction has not been issued,  
21 the brewer shall, in good faith, make a payment of  
22 reasonable compensation to the wholesaler. If,  
23 however, the brewer fails to ship or make available  
24 brands ordered by the wholesaler prior to the brewer  
25 making any payment (including a good faith payment as  
26 provided in this subsection) to the wholesaler, the

1 wholesaler shall be entitled to injunctive relief and  
2 attorneys' fees and shall subject the brewer to  
3 punitive damages. Upon receipt of this payment, the  
4 wholesaler must surrender the affected brand or brands  
5 to the brewer, provided that such surrender shall not  
6 affect the brewer's obligation to pay all amounts  
7 ultimately determined due to the wholesaler under this  
8 Act.

9 (C) If the wholesaler elects expedited binding  
10 arbitration but the brewer rejects, the brewer may proceed  
11 under Section 9 for the purpose of determining reasonable  
12 compensation. Upon determination of reasonable  
13 compensation pursuant to Section 9, the brewer shall pay  
14 the wholesaler the amount so determined. Until receiving  
15 payment from the brewer of the amount so determined, the  
16 wholesaler shall retain the affected brand or brands. If  
17 (a) the brewer initiates a proceeding under Section 9  
18 within 90 days after the wholesaler rejects the offer to  
19 arbitrate, (b) the wholesaler retains the affected brand or  
20 brands for a period of 2 years from the date the wholesaler  
21 rejects the offer to arbitrate, (c) the amount of  
22 reasonable compensation has not been determined, and (d) an  
23 injunction has not been issued, the brewer shall, in good  
24 faith, make a payment of reasonable compensation to the  
25 wholesaler. If, however, the brewer fails to ship or make  
26 available brands ordered by the wholesaler prior to the

1 brewer making any payment (including a good faith payment  
2 as provided in this subsection) to the wholesaler, the  
3 wholesaler shall be entitled to injunctive relief and  
4 attorneys' fees and shall subject the brewer to punitive  
5 damages. Upon receipt of this payment, the wholesaler must  
6 surrender the affected brand or brands to the brewer,  
7 provided that such surrender shall not affect the brewer's  
8 obligation to pay all amounts ultimately determined due to  
9 the wholesaler under this Act.

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

22 (Source: P.A. 96-482, eff. 8-14-09.)

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