

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 gross receipts ~~volume~~ of the
3 wholesaler's business for all beer products supplied by the
4 wholesaler to the retailer ~~all brewers~~. For purposes of this
5 subsection (1.5) only, "annual volume" means the volume of beer
6 products sold by the wholesaler in the 12-month period
7 immediately preceding receipt of the brewer's written offer
8 pursuant to this subsection (1.5) and "annual gross receipts"
9 means the revenues received by the wholesaler from beer
10 products sold by the wholesaler in the 12-month period
11 immediately preceding receipt of the brewer's written offer
12 pursuant to this subsection (1.5).

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

1 binding arbitration. If one party notifies the other party in
2 writing that it elects expedited binding arbitration, the other
3 party has 10 days from receipt of the notification to elect
4 expedited binding arbitration or to reject the arbitration in
5 writing. Failure to elect arbitration shall constitute
6 rejection of the offer to arbitrate.

7 (A) If the parties agree to expedited binding
8 arbitration, the arbitration shall be subject to the
9 expedited process under the commercial rules of the
10 American Arbitration Association. The arbitration shall be
11 concluded within 90 days after the parties agree to
12 expedited binding arbitration under this Section, unless
13 extended by the arbitrator or one of the parties. The
14 wholesaler shall retain the affected brand or brands during
15 the period of arbitration, at the conclusion of which the
16 wholesaler shall surrender the affected brand or brands to
17 the brewer upon payment of the amount determined to be
18 reasonable compensation, provided the wholesaler shall
19 transfer the affected brand or brands to the brewer after
20 90 days if the arbitration proceedings are extended beyond
21 the 90 day limit at the request of the wholesaler.
22 Arbitration costs shall be paid one-half by the wholesaler
23 and one-half by the brewer. The award of the arbitrator
24 shall be final and binding on the parties.

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

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

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

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

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

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

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.