



Rep. Lou Lang

Filed: 5/1/2012

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LRB097 18875 JLS 69026 a

1 AMENDMENT TO SENATE BILL 3399

2 AMENDMENT NO. _____. Amend Senate Bill 3399 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Beer Industry Fair Dealing Act is amended
5 by 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

1 business with relation to the affected brand or brands. The
2 fair market value of the wholesaler's business shall include,
3 but not be limited to, its goodwill, if any.

4 (1.5) The provisions of this subsection (1.5) shall only
5 apply if the brewer agrees to pay reasonable compensation as
6 defined in subsection (1) and the total annual volume of all
7 beer products supplied by a brewer to a wholesaler pursuant to
8 agreements between such brewer and wholesaler represents 10%
9 ~~15%~~ or less of the total annual volume of the wholesaler's
10 business for all beer products supplied by all brewers. For
11 purposes of this subsection (1.5) only, "annual volume" means
12 the volume of beer products sold by the wholesaler in the
13 12-month period immediately preceding receipt of the brewer's
14 written offer pursuant to this subsection (1.5).

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

1 the brewer's written offer, either party may elect to submit
2 the determination of reasonable compensation to expedited
3 binding arbitration. If one party notifies the other party in
4 writing that it elects expedited binding arbitration, the other
5 party has 10 days from receipt of the notification to elect
6 expedited binding arbitration or to reject the arbitration in
7 writing. Failure to elect arbitration shall constitute
8 rejection of the offer to arbitrate.

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

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

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

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

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

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

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

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

1 The award of the arbitrator shall be final and binding on the
2 parties.

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

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.".