



Sen. Antonio Muñoz

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09700SB3399sam001

LRB097 18875 KTG 67484 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 gross receipts ~~volume~~ of the  
10 wholesaler's business for all beer products supplied by the  
11 wholesaler to the retailer ~~all brewers~~. For purposes of this  
12 subsection (1.5) only, "annual volume" means the volume of beer  
13 products sold by the wholesaler in the 12-month period  
14 immediately preceding receipt of the brewer's written offer  
15 pursuant to this subsection (1.5) and "annual gross receipts"  
16 means the revenues received by the wholesaler from beer  
17 products sold by the wholesaler in the 12-month period  
18 immediately preceding receipt of the brewer's written offer  
19 pursuant to this subsection (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. If,  
9           however, the brewer fails to ship or make available  
10          brands ordered by the wholesaler prior to the brewer  
11          making any payment (including a good faith payment as  
12          provided in this subsection) to the wholesaler, the  
13          wholesaler shall be entitled to injunctive relief and  
14          attorneys' fees and shall subject the brewer to  
15          punitive damages. Upon receipt of this payment, the  
16          wholesaler must surrender the affected brand or brands  
17          to the brewer, provided that such surrender shall not  
18          affect the brewer's obligation to pay all amounts  
19          ultimately determined due to the wholesaler under this  
20          Act.

21          (C) If the wholesaler elects expedited binding  
22          arbitration but the brewer rejects, the brewer may proceed  
23          under Section 9 for the purpose of determining reasonable  
24          compensation. Upon determination of reasonable  
25          compensation pursuant to Section 9, the brewer shall pay  
26          the wholesaler the amount so determined. Until receiving

1 payment from the brewer of the amount so determined, the  
2 wholesaler shall retain the affected brand or brands. If  
3 (a) the brewer initiates a proceeding under Section 9  
4 within 90 days after the wholesaler rejects the offer to  
5 arbitrate, (b) the wholesaler retains the affected brand or  
6 brands for a period of 2 years from the date the wholesaler  
7 rejects the offer to arbitrate, (c) the amount of  
8 reasonable compensation has not been determined, and (d) an  
9 injunction has not been issued, the brewer shall, in good  
10 faith, make a payment of reasonable compensation to the  
11 wholesaler. If, however, the brewer fails to ship or make  
12 available brands ordered by the wholesaler prior to the  
13 brewer making any payment (including a good faith payment  
14 as provided in this subsection) to the wholesaler, the  
15 wholesaler shall be entitled to injunctive relief and  
16 attorneys' fees and shall subject the brewer to punitive  
17 damages. Upon receipt of this payment, the wholesaler must  
18 surrender the affected brand or brands to the brewer,  
19 provided that such surrender shall not affect the brewer's  
20 obligation to pay all amounts ultimately determined due to  
21 the wholesaler under this Act.

22 (2) Except as otherwise provided in subsection (1.5), in  
23 the event that the brewer and the beer wholesaler are unable to  
24 mutually agree on the reasonable compensation to be paid for  
25 the value of the wholesaler's business, as defined in this Act,  
26 either party may maintain a civil suit as provided in Section 9

1 or the matter may, by mutual agreement of the parties, be  
2 submitted to a neutral arbitrator to be selected by the parties  
3 and the claim settled in accordance with the rules provided by  
4 the American Arbitration Association. Arbitration costs shall  
5 be paid one-half by the wholesaler and one-half by the brewer.  
6 The award of the arbitrator shall be final and binding on the  
7 parties.

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

9 Section 99. Effective date. This Act takes effect upon  
10 becoming law."