

AN ACT concerning business.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Liquor Control Act of 1934 is amended by changing Section 6-9 as follows:

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

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

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

Each manufacturer, non-resident dealer, distributor, importing distributor, or foreign importer who owns or controls the trade mark, brand or name of any alcoholic liquor shall register with the State Commission, in the Chicago office, on or before the effective date, the name of each person to whom such manufacturer, non-resident dealer, distributor, importing distributor, or foreign importer grants the right to sell at wholesale in this State any such alcoholic liquor, specifying the particular trade mark, brand or name of alcoholic liquor as to which such right is granted, the geographical area or areas for which such right is granted and the period of time for which such rights are granted to such person. Each manufacturer, non-resident dealer, distributor or importing distributor, or foreign importer who is required to register under this Section must furnish a copy of the registration statement at the time of appointment to the person who has been granted the right to sell alcoholic liquor at wholesale. However, if a person who has been appointed the right to sell alcoholic liquor at wholesale does not receive a copy of the registration statement as required under this Section, such person may file a registration statement with the State

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

The registration statement shall state:

- (1) the name of the person appointed;
- (2) the name of the manufacturer, non-resident dealer, distributor, importing distributor, or foreign importer from whom the person received the right to sell alcoholic liquor;
- (3) the particular trade mark, brand, or name of alcoholic liquor as to which the right to sell at wholesale is granted; and
- (4) the geographical areas for which the right to sell at wholesale is granted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 7. Reasonable compensation.

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

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

(1.5) The provisions of this subsection (1.5) shall only apply if the brewer agrees to pay reasonable compensation as defined in subsection (1) and ~~when~~ the total annual volume of all beer products supplied by a brewer to a wholesaler pursuant to agreements between such brewer and wholesaler represents 15% ~~20%~~ or less of the total annual volume of the wholesaler's business for all beer products supplied by all brewers. For purposes of this subsection (1.5) only, "annual volume" means the volume of beer products sold by the wholesaler in the 12-month period immediately preceding receipt of the brewer's written offer pursuant to this subsection (1.5).

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

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

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

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

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

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

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

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

reasonable compensation has not been determined, and (d) an injunction has not been issued, the brewer shall, in good faith, make a payment of reasonable compensation to the wholesaler. If, however, the brewer fails to ship or make available brands ordered by the wholesaler prior to the brewer making any payment (including a good faith payment as provided in this subsection) to the wholesaler, the wholesaler shall be entitled to injunctive relief and attorneys' fees and shall subject the brewer to punitive damages. Upon receipt of this payment, the wholesaler must surrender the affected brand or brands to the brewer, provided that such surrender shall not affect the brewer's obligation to pay all amounts ultimately determined due to the wholesaler under this Act.

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

Public Act 096-0482

SB1282 Enrolled

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

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