

AN ACT concerning business.

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

Section 5. The Beer Industry Fair Dealing Act is amended by changing Sections 1.1, 2, and 5 as follows:

(815 ILCS 720/1.1) (from Ch. 43, par. 301.1)

Sec. 1.1. As used in this Act:

(1) "Beer" means a beverage obtained by the alcoholic fermentation of an infusion or concoction of barley, or other grain, malt, and hops in water, and includes, among other things, beer, ale, stout, lager beer, porter and the like. For purposes of this Act only, the term "beer" shall also include malt beverage products containing less than one-half of 1% of alcohol by volume and marketed for adult consumption as an alternative beverage to beer.

(2) "Agreement" means any contract, agreement, arrangement, operating standards, or amendments to a contract, agreement, arrangement, or operating standards, the effect of which is to substantially change or modify the existing contract, agreement, arrangement, or operating standards, whether expressed or implied, whether oral or written, for a definite or indefinite period between a brewer and a wholesaler pursuant to which a wholesaler has been granted the right to

purchase, resell, and distribute as wholesaler or master distributor any brand or brands of beer offered by a brewer. The agreement between a brewer and wholesaler shall not be considered a franchise relationship.

(3) "Wholesaler" or "beer wholesaler" means any person, other than a manufacturer licensed under the Liquor Control Act of 1934, who is engaged in this State in purchasing, storing, possessing or warehousing any alcoholic liquors for resale or reselling at wholesale, whether within or without this State.

(4) "Brewer" means a person who is engaged in the manufacture of beer, a master distributor as defined in this Section, a successor brewer as defined in this Section, a non-resident dealer under the provisions of the Liquor Control Act of 1934, a foreign importer under the provisions of the Liquor Control Act of 1934, or a person who owns or controls the trademark, brand, or name of beer.

(4.5) "Brand" means any word, name, group of letters, symbols, or any combination thereof that is adopted and used by a brewer to identify a specific beer product and to distinguish that beer product from another beer product.

(4.7) "Brand extension" means any brand that incorporates all or a substantial part of the features of a pre-existing brand of the same brewer and that relies to a significant extent on the good will associated with the pre-existing brand.

(5) "Master Distributor" means a person who, in addition to being a wholesaler, acts in the same or similar capacity as a

brewer or outside seller of one or more brands of beer to other wholesalers on a regular basis in the normal course of business.

(6) "Successor Brewer" means any person who in any way obtains the distribution rights that a brewer, non-resident dealer, foreign importer, or master distributor once had to manufacture or distribute a brand or brands of beer whether by merger, purchase of corporate shares, purchase of assets, or any other arrangement, including but not limited to any arrangements transferring the ownership or control of the trademark, brand or name of the brand.

(7) "Person" means a natural person, partnership, corporation, trust, agency, or other form of business enterprise. Person also includes heirs, assigns, personal representatives and guardians.

(8) "Territory" or "sales territory" means the exclusive geographic area of primary sales responsibility designated by the ~~an~~ agreement between a wholesaler and brewer for any brand, ~~or~~ brands, or brand extensions of the brewer. The "territory" or "sales territory" designated by the agreement may not be designated by address or specific location unless such specific address or location is part of a general and broad territory or sales territory description. The designation of a territory or sales territory in violation of this subsection is prohibited by this Act and deemed discriminatory.

(9) "Good cause" exists if the wholesaler or affected party

has failed to comply with essential and reasonable requirements imposed upon the wholesaler or affected party by the agreement. The requirements may not be discriminating either by their terms or in the methods of their enforcement as compared with requirements imposed on other similarly situated wholesalers by the brewer. The requirements may not be inconsistent with this Act or in violation of any law or regulation.

(10) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade as defined and interpreted under Section 2-103 of the Uniform Commercial Code.

(11) "Reasonable standards and qualifications" means those criteria applied by the brewer to similarly situated wholesalers during a period of 24 months before the proposed change in manager or successor manager of the wholesaler's business.

(12) "Affected party" means a wholesaler, brewer, master distributor, successor brewer, or any person that is a party to an agreement.

(13) "Signs" means signs described in Section 6-6 of the Liquor Control Act of 1934.

(14) "Advertising materials" means advertising materials described in Section 6-6 of the Liquor Control Act of 1934.

(Source: P.A. 95-240, eff. 8-17-07; 95-789, eff. 8-7-08.)

Sec. 2. Purposes. The purposes and scope of this Act are:

(A) This Act is promulgated pursuant to authority of the State under the provisions of the Twenty-First Amendment to the United States Constitution to promote the public's interest in fair, efficient and competitive distribution of malt beverage products by regulation and encouragement of brewer and wholesaler vendors to conduct their business relations toward these ends by:

(i) assuring the beer wholesaler is free to manage its business enterprise, including the wholesaler's right to independently establish its selling prices; and

(ii) assuring the brewer and the public of service from wholesalers who will devote reasonable efforts and resources to sales and distribution of all the brewer's products, which wholesaler has been granted the right to sell and distribute and maintain satisfactory sales levels.

(B) This Act shall be incorporated into and shall be deemed a part of every agreement between brewers and wholesalers and shall govern all relations between brewers and their wholesalers to the full extent consistent with the constitutions and laws of this State and the United States and any provision of this Act shall supersede any conflicting provision of the agreement.

(Source: P.A. 91-247, eff. 7-22-99.)

(815 ILCS 720/5) (from Ch. 43, par. 305)

Sec. 5. Prohibited conduct. No brewer shall:

(1) Induce or coerce, or attempt to induce or coerce, any wholesaler to engage in any illegal act or course of conduct either by threatening to amend, modify, cancel, terminate, or refuse to renew any agreement existing between the brewer and the wholesaler, or by any other means.

(2) Require a wholesaler to assent to any unreasonable requirement, condition, understanding or term or an agreement prohibiting a wholesaler from selling the product of any other brewer or brewers.

(3) Directly or indirectly fix or maintain the price at which a wholesaler may resell beer.

(4) Fail to provide to each wholesaler of its brands a written contract which embodies the brewer's agreement with its wholesalers and conforms to the provisions of this Act.

(5) Require any wholesaler to accept delivery of any beer, signs, advertising materials, or any other item or commodity which has not been ordered by the wholesaler, or require any wholesaler to accept a common carrier for delivery of beer into this State unless the wholesaler consents to the common carrier. In the event a brewer adopts a uniform practice of delivering beer into this State to the premises of all licensed wholesalers, the

brewer may select the common carrier in this State.

(6) Require a wholesaler without the wholesaler's approval to participate in an arrangement for the payment or crediting by an electronic fund transfer transaction for any item or commodity other than beer or to access a wholesaler's account for any item or commodity other than beer.

(7) Require a wholesaler to assent to any requirement prohibiting the wholesaler from disposing, after notice to the brewer, of a product which has been deemed salvageable by a local or State health authority. Nothing herein shall prohibit the brewer from having the first right to purchase the salvageable product from the wholesaler at a price not to exceed the original cost of the product or to subsequently repurchase the product from the insurance company or salvage company.

(8) Refuse to approve or require a wholesaler to terminate a manager or successor manager without good cause. A brewer has good cause only if the person designated as manager or successor manager by the wholesaler fails to meet reasonable standards and qualifications.

(9) Present an agreement to a wholesaler that attempts to waive compliance with any provision of this Act or that requires the wholesaler to waive compliance with any provision of this Act. A wholesaler entering into an

agreement containing provisions in conflict with this Act shall not be deemed to waive compliance with any provision of this Act. No brewer shall induce or coerce, or attempt to induce or coerce, any wholesaler to assent to any agreement, amendment, renewal, or replacement agreement that does not comply with this Act and the laws of this State.

(10) Terminate or attempt to terminate an agreement on the basis that the wholesaler refuses to purchase signs or advertising materials or any quantity or types thereof.

(11) Discriminate against a wholesaler who has entered into a contract relative to signs or advertising materials by not making signs or advertising materials or any quantity or types thereof available to the wholesaler when the brewer makes available such signs or advertising materials to other similarly situated wholesalers in this State.

(12) Present an agreement requiring the wholesaler to arbitrate all disputes without offering the wholesaler in writing the opportunity to reject arbitration and elect to resolve all disputes by maintaining a civil suit in accordance with this Act.

(13) Fail to assign brand extensions to a wholesaler who has been granted the territory to the brand from which the brand extension resulted and agrees to accept the brand extension; however, this requirement does not apply if the

wholesaler is not in compliance with the agreement at the time the brewer offers the brand extension to the wholesaler.

(14) Terminate, cancel, or non-renew or attempt to terminate, cancel, or non-renew an agreement on the basis that the wholesaler fails to agree or consent to an amendment at the time such amendment is presented to the wholesaler. A brewer may amend an agreement including operating standards at any time without the wholesaler's consent if such amendment does not materially, substantially, and adversely affect the wholesaler and such amendment is effective as to all wholesalers of the brewer in the State.

(15) Coerce or attempt to coerce a transferring wholesaler to sign a renewal agreement, replacement agreement, or an amendment to an agreement by threatening to refuse to approve or delay issuing an approval for the sale or transfer of a wholesaler's business.

The agreement must provide in substance that the agreement shall be governed by all applicable provisions of State law, and that such State law is incorporated into the agreement, shall be deemed to be a part thereof, and shall supercede any provision of the agreement in conflict with such State law. If an agreement presented to the wholesaler does not provide this provision in substance the brewer must furnish an executed Illinois addendum to the wholesaler stating that the agreement

shall be governed by all applicable provisions of State law, and that such State law is incorporated into the agreement, shall be deemed to be a part hereof, shall supercede any provision of the agreement in conflict with such State law, and shall govern and control.

No brewer who, pursuant to an agreement with a wholesaler which does not violate antitrust laws, has designated a sales territory for which the wholesaler is exclusively responsible or in which the wholesaler is required to concentrate its efforts, shall enter into an agreement with any other wholesaler for the purpose of establishing an additional wholesaler for the brewer's brand, brands, or brand extension in the territory.

No wholesaler who, pursuant to an agreement is granted a sales territory for which it shall be exclusively responsible or in which it is required to concentrate its efforts, shall make any sale or delivery of beer to any retail licensee whose place of business is not within the territory granted to the wholesaler.

(Source: P.A. 95-240, eff. 8-17-07.)

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