

AN ACT concerning beer wholesalers.

**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 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 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 the total annual volume of all beer products supplied by a brewer to a wholesaler pursuant to

agreements between such brewer and wholesaler represents 10% ~~15%~~ 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.

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

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