

BUSINESS TRANSACTIONS

(815 ILCS 720/) Beer Industry Fair Dealing Act. ILLINOIS

(815 ILCS 720/1) (from Ch. 43, par. 301)

Sec. 1. This Act shall be known and may be cited as the "Beer Industry Fair Dealing Act".

(Source: P.A. 82-946.)

(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 agreement between a wholesaler and brewer for any brand, 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; 96-662, eff. 8-25-09.)

(815 ILCS 720/2) (from Ch. 43, par. 302)

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. 96-662, eff. 8-25-09.)

(815 ILCS 720/3) (from Ch. 43, par. 303)

Sec. 3. Termination and Notice of Cancellation.

(1) Except as provided in subsection (3) of this Section, no brewer or beer wholesaler may cancel, fail to renew, or otherwise terminate an agreement unless the brewer or wholesaler furnishes prior notification to the affected party in accordance with subsection (2).

(2) The notification required under subsection (1) shall be in writing and sent to the affected party by certified mail not less than 90 days before the date on which the agreement will be cancelled, not renewed, or otherwise terminated. The notification shall contain (a) a statement of intention to cancel, failure to renew, or otherwise terminate an agreement, (b) a complete statement of reasons therefore,

including all data and documentation necessary to fully apprise the wholesaler of the reasons for the action, and (c) the date on which the action shall take effect.

(3) A brewer may cancel, fail to renew, or otherwise terminate an agreement without furnishing any prior notification for any of the following reasons:

(A) Wholesaler's failure to pay any account when due and upon demand by the brewer for such payment, in accordance with agreed payment terms.

(B) Wholesaler's assignment for the benefit of creditors, or similar disposition, of substantially all of the assets of such party's business.

(C) Insolvency of wholesaler, or the institution of proceedings in bankruptcy by or against the wholesaler.

(D) Dissolution or liquidation of the wholesaler.

(E) Wholesaler's conviction of, or plea of guilty or no contest, to a charge of violating a law or regulation, in this State which materially and adversely affects the ability of either party to continue to sell beer in this State, or the revocation or suspension of a license or permit to sell beer in this State.

(F) Any attempted transfer of business assets of the wholesaler, voting stock of the wholesaler, voting stock of any parent corporation of the wholesaler, or any change in the beneficial ownership or control of any entity without obtaining the prior consent or approval as provided for under Section 6 unless the brewer neither approves, consents to, nor objects to the transfer within 60 days after receiving all requested information from the wholesaler regarding the proposed purchase, in which event the brewer shall be deemed to have consented to the proposed transaction.

(G) Fraudulent conduct by the wholesaler in its dealings with the brewer.

(Source: P.A. 88-410.)

(815 ILCS 720/4) (from Ch. 43, par. 304)

Sec. 4. Cancellation. No brewer or beer wholesaler may cancel, fail to renew or otherwise terminate an agreement unless the party intending that action has good cause for the cancellation, failure to renew or termination, has made good faith efforts to resolve disagreements, and, in any case in which prior notification is required under Section 3, the party intending to act has furnished the prior notification and the affected party has not eliminated the reasons specified in the notification for cancellation, failure to renew, or termination, within 90 days after the sending of the notification.
(Source: P.A. 82-946; 86-1485.)

(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 supersede 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 supersede 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; 96-662, eff. 8-25-09; 96-1000, eff. 7-2-10.)

(815 ILCS 720/6) (from Ch. 43, par. 306)

Sec. 6. Transfer of business assets or stock. (1) No brewer shall unreasonably withhold or delay its approval of any assignment, sale or transfer of the stock of a wholesaler or all or any portion of a wholesaler's assets, wholesaler's voting stock, the voting stock of any parent corporation, or the beneficial ownership or control of any other entity owning or controlling wholesaler, including the wholesaler's rights and obligations under the terms of an agreement whenever the person or persons to be substituted meet reasonable standards. Upon the death of one of the partners of a partnership operating the business of a wholesaler, no brewer shall deny the surviving partner or partners of such partnership the right to become a successor-in-interest to the agreement between the brewer and such partnership, provided that the survivor has been active in the management of the partnership and is otherwise capable of carrying on the business of the partnership.

(2) Notwithstanding the provisions of subsection (1) upon the death of a wholesaler no brewer shall deny approval for any transfer of ownership to a surviving spouse or adult child of an owner of a wholesaler; provided, however, that such subsequent transfers of such ownership by such surviving spouse or adult child shall thereafter be subject to the provisions of subsection (1).

(Source: P.A. 82-946.)

(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% 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; 97-1119, eff. 8-27-12.)

(815 ILCS 720/8) (from Ch. 43, par. 308)

Sec. 8. Right of free association. No brewer or wholesaler shall restrict or inhibit, directly or indirectly, the right of free association among brewers or wholesalers for any lawful purpose.
(Source: P.A. 82-946.)

(815 ILCS 720/9) (from Ch. 43, par. 309)

Sec. 9. Judicial and other remedies.

(1) If the brewer or wholesaler who is a party to an agreement pursuant to this Act fails to comply with this Act or otherwise engages in conduct prohibited under this Act, the affected party may maintain a civil suit in court if the cause of action directly relates to or stems from the relationship of the individual parties under the agreement, provided that any such suit shall be filed in a State or federal court of competent jurisdiction located in Illinois.

In any legal action challenging any cancellation, termination, or failure to renew, the brewer has the burden of proving the existence of good cause if the wholesaler first makes a prima facie showing that good cause does not exist.

(2) A brewer or wholesaler may bring an action for declaratory judgment for determination of any controversy arising under this Act or out of the brewer and wholesaler relationship.

(3) Upon proper application to the court, a brewer or wholesaler may obtain injunctive relief against any violation of this Act.

(4) In any action under subsection (1) the court may grant such relief as the court determines is necessary or appropriate considering the purposes of this Act.

(5) The prevailing party in any action under subsection (1) shall be entitled to (i) actual damages, (ii) all court or arbitration costs, and (iii) attorneys' fees at the court's discretion.

(6) With respect to any dispute arising under this Act or out of the relationship between brewer and wholesaler, the wholesaler and the brewer each has the absolute right before it has agreed to arbitrate a particular dispute to refuse to arbitrate that particular dispute. Arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association and the laws of this State, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. A brewer may not, as a condition of entering into or renewing an agreement, require the wholesaler to agree to arbitration instead of judicial remedies.

(7) If there is a finding by an arbitrator or a court in a proceeding under this Section or under subsection (1.5) or (2) of Section 7 that a party has not acted in good faith, an appropriate penalty shall

be assessed by the arbitrator or the court against that party and, in addition, that party shall also be ordered to pay all court or arbitration costs and reasonable legal fees incurred by the other party in the proceeding.

(Source: P.A. 90-91, eff. 7-11-97; 90-655, eff. 7-30-98; 91-247, eff. 7-22-99.)

(815 ILCS 720/10) (from Ch. 43, par. 310)

Sec. 10. Coverage and effective date. This Act shall apply to agreements entered into after August 19, 1982.

(Source: P.A. 85-1270.)