

# SB3179



## 98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB3179

Introduced 2/11/2014, by Sen. Don Harmon

### SYNOPSIS AS INTRODUCED:

815 ILCS 720/7

from Ch. 43, par. 307

Amends the Beer Industry Fair Dealing Act. Provides that a brewer that cancels or terminates an agreement may not fail to fill an order for beer requested by the wholesaler until reasonable compensation is accepted by the affected wholesaler.

LRB098 17736 JLS 52854 b

A BILL FOR

1 AN ACT concerning business.

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

4 Section 5. The Beer Industry Fair Dealing Act is amended by  
5 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  
17 business with relation to the affected brand or brands. The  
18 fair market value of the wholesaler's business shall include,  
19 but not be limited to, its goodwill, if any. A brewer may not  
20 fail or refuse to furnish or fill an order for beer requested  
21 by the wholesaler until reasonable compensation is accepted by  
22 the affected wholesaler in compliance with this Section.

23 (1.5) The provisions of this subsection (1.5) shall only

1 apply if the brewer agrees to pay reasonable compensation as  
2 defined in subsection (1) and the total annual volume of all  
3 beer products supplied by a brewer to a wholesaler pursuant to  
4 agreements between such brewer and wholesaler represents 10% or  
5 less of the total annual volume of the wholesaler's business  
6 for all beer products supplied by all brewers. For purposes of  
7 this subsection (1.5) only, "annual volume" means the volume of  
8 beer products sold by the wholesaler in the 12-month period  
9 immediately preceding receipt of the brewer's written offer  
10 pursuant to this subsection (1.5).

11 If a brewer is required to pay reasonable compensation as  
12 described in subsection (1) and the question of reasonable  
13 compensation is the only issue between the parties, the brewer  
14 shall, in good faith, make a written offer to pay reasonable  
15 compensation. The wholesaler shall have 30 days from receipt of  
16 the written offer to accept or reject the brewer's offer.  
17 Failure to respond, in writing, to the written offer shall  
18 constitute rejection of the offer to pay reasonable  
19 compensation. If the wholesaler, in writing, accepts the  
20 written offer, the wholesaler shall surrender the affected  
21 brand or brands to the brewer at the time payment is received  
22 from the brewer. If the wholesaler does not, in writing, accept  
23 the brewer's written offer, either party may elect to submit  
24 the determination of reasonable compensation to expedited  
25 binding arbitration. If one party notifies the other party in  
26 writing that it elects expedited binding arbitration, the other

1 party has 10 days from receipt of the notification to elect  
2 expedited binding arbitration or to reject the arbitration in  
3 writing. Failure to elect arbitration shall constitute  
4 rejection of the offer to arbitrate.

5 (A) If the parties agree to expedited binding  
6 arbitration, the arbitration shall be subject to the  
7 expedited process under the commercial rules of the  
8 American Arbitration Association. The arbitration shall be  
9 concluded within 90 days after the parties agree to  
10 expedited binding arbitration under this Section, unless  
11 extended by the arbitrator or one of the parties. The  
12 wholesaler shall retain the affected brand or brands during  
13 the period of arbitration, at the conclusion of which the  
14 wholesaler shall surrender the affected brand or brands to  
15 the brewer upon payment of the amount determined to be  
16 reasonable compensation, provided the wholesaler shall  
17 transfer the affected brand or brands to the brewer after  
18 90 days if the arbitration proceedings are extended beyond  
19 the 90 day limit at the request of the wholesaler.  
20 Arbitration costs shall be paid one-half by the wholesaler  
21 and one-half by the brewer. The award of the arbitrator  
22 shall be final and binding on the parties.

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

25 (i) The wholesaler may accept, in writing, any  
26 written offer previously made by the brewer. If the

1 wholesaler selects this option, the wholesaler must  
2 surrender the affected brand or brands to the brewer at  
3 the time payment is received. If the wholesaler  
4 believes that the amount paid by the brewer is less  
5 than reasonable compensation under subsection (1), the  
6 wholesaler may bring a proceeding under subsection (2)  
7 for the difference, but may not proceed under  
8 subsection (3) of Section 9; or

9 (ii) The wholesaler may proceed against the brewer  
10 under Section 9, provided the wholesaler must  
11 surrender the affected brand or brands to the brewer if  
12 a proceeding under Section 9 has not been initiated  
13 within 90 days after the wholesaler rejects the offer  
14 to arbitrate. Upon determination of reasonable  
15 compensation pursuant to Section 9, the brewer shall  
16 pay the wholesaler the amount so determined. Until  
17 receiving payment from the brewer of the amount so  
18 determined, the wholesaler shall retain the affected  
19 brand or brands. If (a) the wholesaler retains the  
20 affected brand or brands for a period of 2 years after  
21 the wholesaler rejects the offer to arbitrate, (b) the  
22 amount of reasonable compensation has not been  
23 determined, and (c) an injunction has not been issued,  
24 the brewer shall, in good faith, make a payment of  
25 reasonable compensation to the wholesaler. If,  
26 however, the brewer fails to ship or make available

1 brands ordered by the wholesaler prior to the brewer  
2 making any payment (including a good faith payment as  
3 provided in this subsection) to the wholesaler, the  
4 wholesaler shall be entitled to injunctive relief and  
5 attorneys' fees and shall subject the brewer to  
6 punitive damages. Upon receipt of this payment, the  
7 wholesaler must surrender the affected brand or brands  
8 to the brewer, provided that such surrender shall not  
9 affect the brewer's obligation to pay all amounts  
10 ultimately determined due to the wholesaler under this  
11 Act.

12 (C) If the wholesaler elects expedited binding  
13 arbitration but the brewer rejects, the brewer may proceed  
14 under Section 9 for the purpose of determining reasonable  
15 compensation. Upon determination of reasonable  
16 compensation pursuant to Section 9, the brewer shall pay  
17 the wholesaler the amount so determined. Until receiving  
18 payment from the brewer of the amount so determined, the  
19 wholesaler shall retain the affected brand or brands. If  
20 (a) the brewer initiates a proceeding under Section 9  
21 within 90 days after the wholesaler rejects the offer to  
22 arbitrate, (b) the wholesaler retains the affected brand or  
23 brands for a period of 2 years from the date the wholesaler  
24 rejects the offer to arbitrate, (c) the amount of  
25 reasonable compensation has not been determined, and (d) an  
26 injunction has not been issued, the brewer shall, in good

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

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

25 (Source: P.A. 96-482, eff. 8-14-09; 97-1119, eff. 8-27-12.)