

SB3284



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB3284

Introduced 2/14/2014, by Sen. Thomas Cullerton

SYNOPSIS AS INTRODUCED:

815 ILCS 720/7

from Ch. 43, par. 307

Amends provisions of the Beer Industry Fair Dealing Act setting forth conditions under which a brewer shall pay reasonable compensation to a wholesaler if a brewer cancels, terminates, or fails to renew an agreement or unlawfully denies approval of, or unreasonably withholds consent to, an assignment, transfer, or sale of a wholesaler's business assets or voting stock or other equity securities, the brewer elects expedited binding arbitration, the wholesaler rejects the offer to arbitrate, and other conditions exist. Provides that a brewer shall, in good faith, make a payment of reasonable compensation to the wholesaler if the wholesaler retains a brand for 6 months (rather than 2 years) after the wholesaler rejects the offer to arbitrate and other conditions are met. Effective immediately.

LRB098 17574 JLS 52684 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.

20 (1.5) The provisions of this subsection (1.5) shall only
21 apply if the brewer agrees to pay reasonable compensation as
22 defined in subsection (1) and the total annual volume of all
23 beer products supplied by a brewer to a wholesaler pursuant to

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

8 If a brewer is required to pay reasonable compensation as
9 described in subsection (1) and the question of reasonable
10 compensation is the only issue between the parties, the brewer
11 shall, in good faith, make a written offer to pay reasonable
12 compensation. The wholesaler shall have 30 days from receipt of
13 the written offer to accept or reject the brewer's offer.
14 Failure to respond, in writing, to the written offer shall
15 constitute rejection of the offer to pay reasonable
16 compensation. If the wholesaler, in writing, accepts the
17 written offer, the wholesaler shall surrender the affected
18 brand or brands to the brewer at the time payment is received
19 from the brewer. If the wholesaler does not, in writing, accept
20 the brewer's written offer, either party may elect to submit
21 the determination of reasonable compensation to expedited
22 binding arbitration. If one party notifies the other party in
23 writing that it elects expedited binding arbitration, the other
24 party has 10 days from receipt of the notification to elect
25 expedited binding arbitration or to reject the arbitration in
26 writing. Failure to elect arbitration shall constitute

1 rejection of the offer to arbitrate.

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

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

22 (i) The wholesaler may accept, in writing, any
23 written offer previously made by the brewer. If the
24 wholesaler selects this option, the wholesaler must
25 surrender the affected brand or brands to the brewer at
26 the time payment is received. If the wholesaler

1 believes that the amount paid by the brewer is less
2 than reasonable compensation under subsection (1), the
3 wholesaler may bring a proceeding under subsection (2)
4 for the difference, but may not proceed under
5 subsection (3) of Section 9; or

6 (ii) The wholesaler may proceed against the brewer
7 under Section 9, provided the wholesaler must
8 surrender the affected brand or brands to the brewer if
9 a proceeding under Section 9 has not been initiated
10 within 90 days after the wholesaler rejects the offer
11 to arbitrate. Upon determination of reasonable
12 compensation pursuant to Section 9, the brewer shall
13 pay the wholesaler the amount so determined. Until
14 receiving payment from the brewer of the amount so
15 determined, the wholesaler shall retain the affected
16 brand or brands. If (a) the wholesaler retains the
17 affected brand or brands for a period of 6 months ~~2~~
18 ~~years~~ after the wholesaler rejects the offer to
19 arbitrate, (b) the amount of reasonable compensation
20 has not been determined, and (c) an injunction has not
21 been issued, the brewer shall, in good faith, make a
22 payment of reasonable compensation to the wholesaler.
23 If, however, the brewer fails to ship or make available
24 brands ordered by the wholesaler prior to the brewer
25 making any payment (including a good faith payment as
26 provided in this subsection) to the wholesaler, the

1 wholesaler shall be entitled to injunctive relief and
2 attorneys' fees and shall subject the brewer to
3 punitive damages. Upon receipt of this payment, the
4 wholesaler must surrender the affected brand or brands
5 to the brewer, provided that such surrender shall not
6 affect the brewer's obligation to pay all amounts
7 ultimately determined due to the wholesaler under this
8 Act.

9 (C) If the wholesaler elects expedited binding
10 arbitration but the brewer rejects, the brewer may proceed
11 under Section 9 for the purpose of determining reasonable
12 compensation. Upon determination of reasonable
13 compensation pursuant to Section 9, the brewer shall pay
14 the wholesaler the amount so determined. Until receiving
15 payment from the brewer of the amount so determined, the
16 wholesaler shall retain the affected brand or brands. If
17 (a) the brewer initiates a proceeding under Section 9
18 within 90 days after the wholesaler rejects the offer to
19 arbitrate, (b) the wholesaler retains the affected brand or
20 brands for a period of 6 months ~~2 years~~ from the date the
21 wholesaler rejects the offer to arbitrate, (c) the amount
22 of reasonable compensation has not been determined, and (d)
23 an injunction has not been issued, the brewer shall, in
24 good faith, make a payment of reasonable compensation to
25 the wholesaler. If, however, the brewer fails to ship or
26 make available brands ordered by the wholesaler prior to

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

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

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

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