



Rep. Will Guzzardi

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1 AMENDMENT TO HOUSE BILL 3442

2 AMENDMENT NO. _____. Amend House Bill 3442 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Beer Industry Fair Dealing Act is amended
5 by changing Sections 1.1, 2, 3, 4, 6, 7, 8, and 9 and by adding
6 Section 8.5 as follows:

7 (815 ILCS 720/1.1) (from Ch. 43, par. 301.1)

8 Sec. 1.1. As used in this Act:

9 (1) "Beer" means a beverage obtained by the alcoholic
10 fermentation of an infusion or concoction of barley, or other
11 grain, malt, and hops in water, and includes, among other
12 things, beer, ale, stout, lager beer, porter, all beverages
13 brewed or fermented wholly or in part from malt products, and
14 the like; and for purposes of this Act only, the term "beer"
15 shall also include malt beverage products containing less than
16 one-half of 1% of alcohol by volume and marketed for adult

1 consumption as an alternative beverage to beer.

2 (2) "Agreement" means any contract, agreement,
3 arrangement, operating standards, or amendments to a contract,
4 agreement, arrangement, or operating standards, the effect of
5 which is to substantially change or modify the existing
6 contract, agreement, arrangement, or operating standards,
7 whether expressed or implied, whether oral or written, for a
8 definite or indefinite period between a brewer and a wholesaler
9 pursuant to which a wholesaler has been granted the right to
10 purchase, resell, and distribute as wholesaler or master
11 distributor any brand or brands of beer offered by a brewer.
12 The agreement between a brewer or craft brewer and wholesaler
13 shall not be considered a franchise relationship.

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

20 (4) "Brewer" means a person who is engaged in the
21 manufacture of 3,720,000 or more gallons of beer, a master
22 distributor as defined in this Section, a successor brewer as
23 defined in this Section, a non-resident dealer under the
24 provisions of the Liquor Control Act of 1934, a foreign
25 importer under the provisions of the Liquor Control Act of
26 1934, or a person who owns or controls the trademark, brand, or

1 name of beer.

2 (4.4) "Craft brewer" means a person licensed to manufacture
3 beer or who owns or controls the trademark, brand, or name of
4 beer or enters into a written agreement for the manufacture of
5 less than 3,720,000 gallons of beer under a license, contract,
6 or other written agreement.

7 (4.5) "Brand" means any word, name, group of letters,
8 symbols, or any combination thereof that is adopted and used by
9 a brewer or craft brewer to identify a specific beer product
10 and to distinguish that beer product from another beer product.

11 (4.7) "Brand extension" means any brand that incorporates
12 all or a substantial part of the features of a pre-existing
13 brand of the same brewer or craft brewer and that relies to a
14 significant extent on the good will associated with the
15 pre-existing brand.

16 (5) "Master Distributor" means a person who, in addition to
17 being a wholesaler, acts in the same or similar capacity as a
18 brewer or outside seller of one or more brands of beer to other
19 wholesalers on a regular basis in the normal course of
20 business.

21 (6) "Successor wholesaler ~~Brewer~~" means any person who in
22 any way obtains the distribution rights that a wholesaler
23 ~~brewer~~, non-resident dealer, foreign importer, or master
24 distributor once had to ~~manufacture or~~ distribute a brand or
25 brands of beer whether by merger, purchase of corporate shares,
26 purchase of assets, purchase of brand rights, or any other

1 arrangement, including but not limited to any arrangements
2 transferring the ownership or control of the trademark, brand
3 or name of the brand.

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

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

19 (9) "Good cause" exists if the wholesaler or affected party
20 has failed to comply with essential and reasonable requirements
21 imposed upon the wholesaler or affected party by the agreement.
22 The requirements may not be discriminating either by their
23 terms or in the methods of their enforcement as compared with
24 requirements imposed on other similarly situated wholesalers
25 by the brewer or craft brewer. The requirements may not be
26 inconsistent with this Act or in violation of any law or

1 regulation.

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

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

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

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

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

18 (Source: P.A. 98-843, eff. 1-1-15.)

19 (815 ILCS 720/2) (from Ch. 43, par. 302)

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

21 (A) This Act is promulgated pursuant to authority of the
22 State under the provisions of the Twenty-First Amendment to the
23 United States Constitution to promote the public's interest in
24 fair, efficient and competitive distribution of malt beverage
25 products by regulation and encouragement of brewer, craft

1 brewer, and wholesaler vendors to conduct their business
2 relations toward these ends by:

3 (i) assuring the beer wholesaler, brewer, and craft
4 brewer is free to manage its business enterprise, including
5 the brewer's or craft brewer's right to negotiate and
6 independently establish its selling prices and the
7 wholesaler's right to independently establish its selling
8 prices; and

9 (ii) assuring the brewer, craft brewer, and the public
10 of service from wholesalers who will devote reasonable
11 efforts and resources to sales and distribution of all the
12 brewer's or craft brewer's products, which wholesaler has
13 been granted the right to sell and distribute and maintain
14 ~~satisfactory~~ sales levels to the satisfaction of the brewer
15 or craft brewer.

16 (B) This Act shall be incorporated into and shall be deemed
17 a part of every agreement between brewers or craft brewers and
18 wholesalers and shall govern all relations between brewers and
19 their wholesalers to the full extent consistent with the
20 constitutions and laws of this State and the United States and
21 any provision of this Act shall supersede any conflicting
22 provision of the agreement. Notwithstanding the foregoing,
23 wholesalers, brewers, and craft brewers may, upon mutual
24 written agreement, agree to waive the provisions of this Act as
25 it may apply to the agreement.

26 (Source: P.A. 96-662, eff. 8-25-09.)

1 (815 ILCS 720/3) (from Ch. 43, par. 303)

2 Sec. 3. Termination and notice of cancellation.

3 (1) Except as provided in subsection (3) of this Section
4 and in Section 8.5, no brewer or beer wholesaler may cancel,
5 fail to renew, or otherwise terminate an agreement unless the
6 brewer or wholesaler furnishes prior notification to the
7 affected party in accordance with subsection (2).

8 (2) The notification required under subsection (1) shall be
9 in writing and sent to the affected party by certified mail not
10 less than 30 ~~90~~ days before the date on which the agreement
11 will be cancelled, not renewed, or otherwise terminated. The
12 notification shall contain (a) a statement of intention to
13 cancel, failure to renew, or otherwise terminate an agreement,
14 (b) a complete statement of reasons therefore, including all
15 data and documentation necessary to fully apprise the
16 wholesaler of the reasons for the action, and (c) the date on
17 which the action shall take effect.

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

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

24 (B) Wholesaler's assignment for the benefit of
25 creditors, or similar disposition, of substantially all of

1 the assets of such party's business.

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

4 (D) Dissolution or liquidation of the wholesaler.

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

11 (F) Any attempted transfer of business assets of the
12 wholesaler, voting stock of the wholesaler, voting stock of
13 any parent corporation of the wholesaler, or any change in
14 the beneficial ownership or control of any entity without
15 obtaining the prior consent or approval as provided for
16 under Section 6 unless the brewer or craft brewer neither
17 approves, consents to, nor objects to the transfer within
18 60 days after receiving all requested information from the
19 wholesaler regarding the proposed purchase, in which event
20 the brewer shall be deemed to have consented to the
21 proposed transaction.

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

24 (H) Malfeasance, misfeasance, or a material
25 misrepresentation made by the wholesaler to the brewer.

26 (I) Conduct or acts by the wholesaler that cause damage

1 within the marketplace to the brewer's trademark, name,
2 brand, reputation, or the products sold by the wholesaler.

3 (J) An intentional breach by the wholesaler of the
4 provisions of this Act or the provisions of the
5 wholesaler's Agreement with a brewer.

6 (Source: P.A. 88-410; revised 10-9-18.)

7 (815 ILCS 720/4) (from Ch. 43, par. 304)

8 Sec. 4. Cancellation. No brewer, craft brewer, or beer
9 wholesaler may cancel, fail to renew or otherwise terminate an
10 agreement unless the party intending that action has good cause
11 for the cancellation, failure to renew or termination, except
12 as provided for in Section 8.5, has made good faith efforts to
13 resolve disagreements, and, in any case in which prior
14 notification is required under Section 3 or as provided for in
15 Section 8.5, the party intending to act has furnished the prior
16 notification and the affected party has not eliminated the
17 reasons specified in the notification for cancellation,
18 failure to renew, or termination, within 30 ~~90~~ days after the
19 sending of the notification. Wholesalers, brewers, and craft
20 brewers may agree, in writing, to extend the period for
21 resolution of the causes for termination beyond 30 days.

22 (Source: P.A. 82-946; 86-1485.)

23 (815 ILCS 720/6) (from Ch. 43, par. 306)

24 Sec. 6. Transfer of business assets or stock.

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

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

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

2 (815 ILCS 720/7) (from Ch. 43, par. 307)

3 Sec. 7. Reasonable compensation.

4 (1) Subject to the right of any party to an agreement to
5 pursue any remedy provided in Section 9 or subject to the
6 provisions of Section 8.5, any brewer or craft brewer that
7 cancels, terminates or fails to renew any agreement, or
8 unlawfully denies approval of, or unreasonably withholds
9 consent, to any assignment, transfer or sale of a wholesaler's
10 business assets or voting stock or other equity securities,
11 except as provided in this Act, shall pay the wholesaler with
12 which it has an agreement pursuant to this Act reasonable
13 compensation for the fair market value of the wholesaler's,
14 brewer's, or craft brewer's business with relation to the
15 affected brand or brands. The fair market value of the
16 wholesaler's business shall include, but not be limited to, its
17 goodwill, if any.

18 (1.5) The provisions of this subsection (1.5) shall only
19 apply if the brewer or craft brewer agrees to pay reasonable
20 compensation, as defined in subsection (1), and the total
21 annual volume of all beer products supplied by the a brewer or
22 craft brewer to a wholesaler pursuant to agreements between
23 such brewer and wholesaler represents 10% or less of the total
24 annual volume of the wholesaler's business for all beer
25 products supplied by all brewers and craft brewers. For

1 purposes of this subsection (1.5) only, "annual volume" means
2 the volume of beer products sold by the wholesaler in the
3 12-month period immediately preceding receipt of the brewer's
4 written offer pursuant to this subsection (1.5).

5 If a brewer or craft brewer is required to pay reasonable
6 compensation as described in subsection (1) and the question of
7 reasonable compensation is the only issue between the parties,
8 the brewer or craft brewer shall, in good faith, make a written
9 offer to pay reasonable compensation. The wholesaler shall have
10 30 days from receipt of the written offer to accept or reject
11 the brewer's or craft brewer's offer. Failure to respond, in
12 writing, to the written offer shall constitute rejection of the
13 offer to pay reasonable compensation. If the wholesaler, in
14 writing, accepts the written offer, the wholesaler shall
15 surrender the affected brand or brands to the brewer or craft
16 brewer at the time payment is received from the brewer or craft
17 brewer. If the wholesaler does not, in writing, accept the
18 brewer's or craft brewer's written offer, the rejecting party
19 must submit a counter offer to the brewer or craft brewer
20 within 30 days after receipt of the original written offer.
21 Failure to submit a counter offer constitutes an acceptance of
22 the original offer and constitutes a binding waiver of the
23 arbitration proceedings as specified in this Section.

24 If the parties to an agreement subject to this Act fail to
25 agree on the amount of reasonable compensation, either party
26 may elect to submit the determination of reasonable

1 compensation to expedited binding arbitration. If one party
2 notifies the other party in writing that it elects expedited
3 binding arbitration, the other party has 10 days from receipt
4 of the notification to elect expedited binding arbitration or
5 to reject the arbitration in writing. Failure to elect
6 arbitration shall constitute rejection of the offer to
7 arbitrate.

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

26 (B) If the brewer, craft brewer, or wholesaler elects

1 expedited binding arbitration, but the wholesaler, brewer,
2 or craft brewer rejects the offer to arbitrate:

3 (i) The wholesaler may accept, in writing, any
4 written offer previously made by the brewer. If the
5 wholesaler selects this option, the wholesaler must
6 surrender the affected brand or brands to the brewer at
7 the time payment is received. If the wholesaler
8 believes that the amount paid by the brewer or craft
9 brewer is less than reasonable compensation under
10 subsection (1), the wholesaler may bring a proceeding
11 under subsection (2) for the difference, but may not
12 proceed under subsection (3) of Section 9; or

13 (ii) The wholesaler, brewer, or craft brewer may
14 proceed against the brewer, craft brewer, or
15 wholesaler under Section 9, provided the wholesaler
16 must surrender the affected brand or brands to the
17 brewer if a proceeding under Section 9 has not been
18 initiated within 90 days after the wholesaler rejects
19 the offer to arbitrate. Upon determination of
20 reasonable compensation pursuant to Section 9, the
21 brewer shall pay the wholesaler the amount so
22 determined. Until receiving payment from the brewer of
23 the amount so determined, the wholesaler shall retain
24 the affected brand or brands. If (a) the wholesaler
25 retains the affected brand or brands for a period of
26 one year ~~2 years~~ after the wholesaler rejects the offer

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

17 (C) If the wholesaler elects expedited binding
18 arbitration, but the brewer or craft brewer rejects, the
19 brewer or craft brewer may proceed under Section 9 for the
20 purpose of determining reasonable compensation. Upon
21 determination of reasonable compensation pursuant to
22 Section 9, the brewer shall pay the wholesaler the amount
23 so determined. Until receiving payment from the brewer of
24 the amount so determined, the wholesaler shall retain the
25 affected brand or brands. If (a) the brewer initiates a
26 proceeding under Section 9 within 90 days after the

1 wholesaler rejects the offer to arbitrate, (b) the
2 wholesaler retains the affected brand or brands for a
3 period of 2 years from the date the wholesaler rejects the
4 offer to arbitrate, (c) the amount of reasonable
5 compensation has not been determined, and (d) an injunction
6 has not been issued, the brewer shall, in good faith, make
7 a payment of reasonable compensation to the wholesaler. If,
8 however, the brewer fails to ship or make available brands
9 ordered by the wholesaler prior to the brewer making any
10 payment (including a good faith payment as provided in this
11 subsection) to the wholesaler, the wholesaler shall be
12 entitled to injunctive relief and attorneys' fees and shall
13 subject the brewer to punitive damages. Upon receipt of
14 this payment, the wholesaler must surrender the affected
15 brand or brands to the brewer, provided that such surrender
16 shall not affect the brewer's obligation to pay all amounts
17 ultimately determined due to the wholesaler under this Act.

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

1 be paid one-half by the wholesaler and one-half by the brewer.
2 The award of the arbitrator shall be final and binding on the
3 parties.

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

5 (815 ILCS 720/8) (from Ch. 43, par. 308)

6 Sec. 8. Right of free association. No brewer, craft brewer,
7 or wholesaler shall restrict or inhibit, directly or
8 indirectly, the right of free association among brewers, craft
9 brewers, or wholesalers for any lawful purpose.

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

11 (815 ILCS 720/8.5 new)

12 Sec. 8.5. Craft brewer agreements.

13 (1) Upon written notice to a wholesaler, a craft brewer
14 may cancel, terminate, or not renew any agreement with a
15 wholesaler.

16 (2) The notification required under subsection (1)
17 shall be in writing and sent to the affected party by
18 certified mail not less than 30 days before the date on
19 which the agreement will be terminated, cancelled, or not
20 renewed. The notice shall contain: (i) a statement of
21 intention to cancel, to not renew, or otherwise terminate
22 an agreement; (ii) the date on which the action will take
23 effect; and (iii) a complete statement of the reasons for
24 the termination, cancellation, or nonrenewal, including

1 whether the termination, cancellation, or nonrenewal is
2 based on good cause, or a violation of Section 5, or both.

3 (3) Upon receipt of a notice of termination,
4 cancellation, or nonrenewal, a wholesaler may be entitled
5 to reasonable compensation, but is not automatically
6 entitled to receive compensation.

7 (4) A wholesaler and craft brewer may in their written
8 agreement provide for predetermined compensation and the
9 circumstances under which the wholesaler would be entitled
10 to compensation.

11 (5) Any compensation negotiated and agreed to be paid
12 to a wholesaler as a result of a termination, cancellation,
13 or nonrenewal by a craft brewer, except for compensation
14 provided for in the agreement, shall be determined by the
15 following factors: (i) the length of time the wholesaler
16 has distributed the craft brewer's product; (ii) the total
17 annual volume of all products supplied by a craft brewer to
18 a wholesaler and the percentage of the wholesaler's total
19 sales the craft brewer's volume represents; and (iii) the
20 actual case equivalent sales of the craft brewer's products
21 made by the wholesaler on sales of the craft brewer's
22 product.

23 (6) A wholesaler is not entitled to any compensation
24 under the following:

25 (A) The wholesaler shall not receive compensation
26 if the craft brewer cancels, terminates, or does not

1 renew an agreement for any of the reasons stated in
2 subsection (3) of Section 3.

3 (B) The wholesaler shall not receive any
4 compensation if the craft brewer cancels, terminates,
5 or does not renew an agreement for committing any
6 violation of Section 5.

7 (C) The wholesaler shall not receive any
8 compensation if the craft brewer cancels, terminates,
9 or does not renew an agreement if the wholesaler has
10 not purchased or sold the craft brewer's products for
11 more than 6 months prior to the date of the notice of
12 termination, cancellation, or nonrenewal.

13 (D) The wholesaler shall not receive compensation
14 if the sales of the craft brewer's products represent
15 less than 2% of the wholesaler's annual gross sales of
16 all of its beers. A wholesaler shall, on an annual
17 basis, provide the craft brewer with a sales report
18 that indicates the percentage of the wholesaler's
19 annual gross sales for the previous 12 months the craft
20 brewer represents.

21 (815 ILCS 720/9) (from Ch. 43, par. 309)

22 Sec. 9. Judicial and other remedies.

23 (1) If the brewer, craft brewer, or wholesaler who is a
24 party to an agreement pursuant to this Act fails to comply with
25 this Act or otherwise engages in conduct prohibited under this

1 Act, the affected party may maintain a civil suit in court if
2 the cause of action directly relates to or stems from the
3 relationship of the individual parties under the agreement,
4 provided that any such suit shall be filed in a State or
5 federal court of competent jurisdiction located in Illinois.

6 In any legal action challenging any cancellation,
7 termination, or failure to renew, the brewer, craft brewer, or
8 wholesaler that initiates the civil suit has the burden of
9 proving the existence of good cause ~~if the wholesaler first~~
10 ~~makes a prima facie showing that good cause does not exist.~~

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

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

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

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

25 (6) With respect to any dispute arising under this Act or
26 out of the relationship between brewer or craft brewer and

1 wholesaler, the wholesaler and the brewer or craft brewer, each
2 has the absolute right ~~before it has agreed to arbitrate a~~
3 ~~particular dispute~~ to refuse to arbitrate that particular
4 dispute. A party refusing to accept arbitration shall do so in
5 writing within 30 days after receipt of a written request for
6 arbitration. Arbitration shall be conducted in accordance with
7 the Commercial Arbitration Rules of the American Arbitration
8 Association and the laws of this State, and judgment upon the
9 award rendered by the arbitrator may be entered in any court
10 having jurisdiction. A brewer, craft brewer, or wholesaler may
11 not, as a condition of entering into or renewing an agreement,
12 require the wholesaler, brewer, or craft brewer to agree to
13 arbitration instead of judicial remedies.

14 (7) If there is a finding by an arbitrator or a court in a
15 proceeding under this Section or under subsection (1.5) or (2)
16 of Section 7 that a party has not acted in good faith, an
17 appropriate penalty shall be assessed by the arbitrator or the
18 court against that party and, in addition, that party shall
19 also be ordered to pay all court or arbitration costs and
20 reasonable legal fees incurred by the other party in the
21 proceeding.

22 (Source: P.A. 90-91, eff. 7-11-97; 90-655, eff. 7-30-98;
23 91-247, eff. 7-22-99.)".