



Rep. Lou Lang

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LRB096 08405 KTG 22928 a

1 AMENDMENT TO HOUSE BILL 773

2 AMENDMENT NO. _____. Amend House Bill 773, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Beer Industry Fair Dealing Act is amended
6 by changing Sections 1.1, 2, and 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 and the like. For
13 purposes of this Act only, the term "beer" shall also include
14 malt beverage products containing less than one-half of 1% of
15 alcohol by volume and marketed for adult consumption as an
16 alternative beverage to beer.

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

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

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

25 (4.5) "Brand" means any word, name, group of letters,
26 symbols, or any combination thereof that is adopted and used by

1 a brewer to identify a specific beer product and to distinguish
2 that beer product from another beer product.

3 (4.7) "Brand extension" means any brand that incorporates
4 all or a substantial part of the features of a pre-existing
5 brand of the same brewer and that relies to a significant
6 extent on the good will associated with the pre-existing brand.

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

12 (6) "Successor Brewer" means any person who in any way
13 obtains the distribution rights that a brewer, non-resident
14 dealer, foreign importer, or master distributor once had to
15 manufacture or distribute a brand or brands of beer whether by
16 merger, purchase of corporate shares, purchase of assets, or
17 any other arrangement, including but not limited to any
18 arrangements transferring the ownership or control of the
19 trademark, brand or name of the brand.

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

24 (8) "Territory" or "sales territory" means the exclusive
25 geographic area of primary sales responsibility designated by
26 the an agreement between a wholesaler and brewer for any brand.

1 ~~or~~ brands, or brand extensions of the brewer. The "territory"
2 or "sales territory" designated by the agreement may not be
3 designated by address or specific location unless such specific
4 address or location is part of a general and broad territory or
5 sales territory description. The designation of a territory or
6 sales territory in violation of this subsection is prohibited
7 by this Act and deemed discriminatory.

8 (9) "Good cause" exists if the wholesaler or affected party
9 has failed to comply with essential and reasonable requirements
10 imposed upon the wholesaler or affected party by the agreement.
11 The requirements may not be discriminating either by their
12 terms or in the methods of their enforcement as compared with
13 requirements imposed on other similarly situated wholesalers
14 by the brewer. The requirements may not be inconsistent with
15 this Act or in violation of any law or regulation.

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

20 (11) "Reasonable standards and qualifications" means those
21 criteria applied by the brewer to similarly situated
22 wholesalers during a period of 24 months before the proposed
23 change in manager or successor manager of the wholesaler's
24 business.

25 (12) "Affected party" means a wholesaler, brewer, master
26 distributor, successor brewer, or any person that is a party to

1 an agreement.

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

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

6 (Source: P.A. 95-240, eff. 8-17-07; 95-789, eff. 8-7-08.)

7 (815 ILCS 720/2) (from Ch. 43, par. 302)

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

9 (A) This Act is promulgated pursuant to authority of the
10 State under the provisions of the Twenty-First Amendment to the
11 United States Constitution to promote the public's interest in
12 fair, efficient and competitive distribution of malt beverage
13 products by regulation and encouragement of brewer and
14 wholesaler vendors to conduct their business relations toward
15 these ends by:

16 (i) assuring the beer wholesaler is free to manage its
17 business enterprise, including the wholesaler's right to
18 independently establish its selling prices; and

19 (ii) assuring the brewer and the public of service from
20 wholesalers who will devote reasonable efforts and
21 resources to sales and distribution of all the brewer's
22 products, which wholesaler has been granted the right to
23 sell and distribute and maintain satisfactory sales
24 levels.

25 (B) This Act shall be incorporated into and shall be deemed

1 a part of every agreement between brewers and wholesalers and
2 shall govern all relations between brewers and their
3 wholesalers to the full extent consistent with the
4 constitutions and laws of this State and the United States and
5 any provision of this Act shall supersede any conflicting
6 provision of the agreement.

7 (Source: P.A. 91-247, eff. 7-22-99.)

8 (815 ILCS 720/5) (from Ch. 43, par. 305)

9 Sec. 5. Prohibited conduct. No brewer shall:

10 (1) Induce or coerce, or attempt to induce or coerce,
11 any wholesaler to engage in any illegal act or course of
12 conduct either by threatening to amend, modify, cancel,
13 terminate, or refuse to renew any agreement existing
14 between the brewer and the wholesaler, or by any other
15 means.

16 (2) Require a wholesaler to assent to any unreasonable
17 requirement, condition, understanding or term or an
18 agreement prohibiting a wholesaler from selling the
19 product of any other brewer or brewers.

20 (3) Directly or indirectly fix or maintain the price at
21 which a wholesaler may resell beer.

22 (4) Fail to provide to each wholesaler of its brands a
23 written contract which embodies the brewer's agreement
24 with its wholesalers and conforms to the provisions of this
25 Act.

1 (5) Require any wholesaler to accept delivery of any
2 beer, signs, advertising materials, or any other item or
3 commodity which has not been ordered by the wholesaler, or
4 require any wholesaler to accept a common carrier for
5 delivery of beer into this State unless the wholesaler
6 consents to the common carrier. In the event a brewer
7 adopts a uniform practice of delivering beer into this
8 State to the premises of all licensed wholesalers, the
9 brewer may select the common carrier in this State.

10 (6) Require a wholesaler without the wholesaler's
11 approval to participate in an arrangement for the payment
12 or crediting by an electronic fund transfer transaction for
13 any item or commodity other than beer or to access a
14 wholesaler's account for any item or commodity other than
15 beer.

16 (7) Require a wholesaler to assent to any requirement
17 prohibiting the wholesaler from disposing, after notice to
18 the brewer, of a product which has been deemed salvageable
19 by a local or State health authority. Nothing herein shall
20 prohibit the brewer from having the first right to purchase
21 the salvageable product from the wholesaler at a price not
22 to exceed the original cost of the product or to
23 subsequently repurchase the product from the insurance
24 company or salvage company.

25 (8) Refuse to approve or require a wholesaler to
26 terminate a manager or successor manager without good

1 cause. A brewer has good cause only if the person
2 designated as manager or successor manager by the
3 wholesaler fails to meet reasonable standards and
4 qualifications.

5 (9) Present an agreement to a wholesaler that attempts
6 to waive compliance with any provision of this Act or that
7 requires the wholesaler to waive compliance with any
8 provision of this Act. A wholesaler entering into an
9 agreement containing provisions in conflict with this Act
10 shall not be deemed to waive compliance with any provision
11 of this Act. No brewer shall induce or coerce, or attempt
12 to induce or coerce, any wholesaler to assent to any
13 agreement, amendment, renewal, or replacement agreement
14 that does not comply with this Act and the laws of this
15 State.

16 (10) Terminate or attempt to terminate an agreement on
17 the basis that the wholesaler refuses to purchase signs or
18 advertising materials or any quantity or types thereof.

19 (11) Discriminate against a wholesaler who has entered
20 into a contract relative to signs or advertising materials
21 by not making signs or advertising materials or any
22 quantity or types thereof available to the wholesaler when
23 the brewer makes available such signs or advertising
24 materials to other similarly situated wholesalers in this
25 State.

26 (12) Present an agreement requiring the wholesaler to

1 arbitrate all disputes without offering the wholesaler in
2 writing the opportunity to reject arbitration and elect to
3 resolve all disputes by maintaining a civil suit in
4 accordance with this Act.

5 (13) Fail to assign brand extensions to a wholesaler
6 who has been granted the territory to the brand from which
7 the brand extension resulted and agrees to accept the brand
8 extension; however, this requirement does not apply if the
9 wholesaler is not in compliance with the agreement at the
10 time the brewer offers the brand extension to the
11 wholesaler.

12 (14) Terminate, cancel, or non-renew or attempt to
13 terminate, cancel, or non-renew an agreement on the basis
14 that the wholesaler fails to agree or consent to an
15 amendment at the time such amendment is presented to the
16 wholesaler. A brewer may amend an agreement including
17 operating standards at any time without the wholesaler's
18 consent if such amendment does not materially,
19 substantially, and adversely affect the wholesaler and
20 such amendment is effective as to all wholesalers of the
21 brewer in the State.

22 (15) Coerce or attempt to coerce a wholesaler to sign a
23 renewal agreement, replacement agreement, or an amendment
24 to an agreement by threatening to refuse to approve or
25 delay issuing an approval for the sale of a wholesaler's
26 business.

1 The agreement must state and provide that the agreement
2 shall be governed by all applicable provisions of State law and
3 that such State law is incorporated into the agreement and
4 shall be deemed to be a part hereof and shall supersede any
5 provision of the agreement in conflict with such State law and
6 the applicable provisions of such State law shall govern and be
7 controlling. If an agreement presented to the wholesaler does
8 not contain this provision, the brewer must furnish an executed
9 Illinois addendum to the wholesaler stating the agreement shall
10 be governed by all applicable provisions of State law and that
11 such State law is incorporated into the agreement and shall be
12 deemed to be a part hereof and shall supersede any provision of
13 the agreement in conflict with such State law and shall govern
14 and be controlling.

15 No brewer who, pursuant to an agreement with a wholesaler
16 which does not violate antitrust laws, has designated a sales
17 territory for which the wholesaler is exclusively responsible
18 or in which the wholesaler is required to concentrate its
19 efforts, shall enter into an agreement with any other
20 wholesaler for the purpose of establishing an additional
21 wholesaler for the brewer's brand, brands, or brand extension
22 in the territory.

23 No wholesaler who, pursuant to an agreement is granted a
24 sales territory for which it shall be exclusively responsible
25 or in which it is required to concentrate its efforts, shall
26 make any sale or delivery of beer to any retail licensee whose

1 place of business is not within the territory granted to the
2 wholesaler.

3 (Source: P.A. 95-240, eff. 8-17-07.)

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