

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 Liquor Control Act of 1934 is amended by
5 changing Section 6-9 as follows:

6 (235 ILCS 5/6-9) (from Ch. 43, par. 126)

7 Sec. 6-9. Registration of trade marks; sale within
8 geographical area; delivery to authorized persons. The
9 Legislature hereby finds and declares that for purposes of
10 ensuring the preservation and enhancement of interbrand
11 competition in the alcoholic liquor industry within the State,
12 ensuring that importation and distribution of alcoholic liquor
13 in the State will be subject to thorough and inexpensive
14 monitoring by the State, reducing the importation of illicit or
15 untaxed alcoholic liquor into the State, excluding misbranded
16 alcoholic liquor products from the State, providing incentives
17 to distributors to service and sell to larger numbers of retail
18 licensees in the geographic area where such distributors are
19 engaged in business, and reducing the amount of spoiled and
20 overaged alcoholic liquor products sold to consumers, it is
21 necessary to restrict the purchase of alcoholic liquors at
22 wholesale in the State to those persons selected by the
23 manufacturer, distributor, importing distributor or foreign

1 importer who owns or controls the trade mark, brand or name of
2 the alcoholic liquor products sold to such persons, and to
3 restrict the geographic area or areas within which such persons
4 sell such alcoholic liquor at wholesale, as provided in this
5 Section.

6 Each manufacturer, non-resident dealer, distributor,
7 importing distributor, or foreign importer who owns or controls
8 the trade mark, brand or name of any alcoholic liquor shall
9 register with the State Commission, in the Chicago office, on
10 or before the effective date, the name of each person to whom
11 such manufacturer, non-resident dealer, distributor, importing
12 distributor, or foreign importer grants the right to sell at
13 wholesale in this State any such alcoholic liquor, specifying
14 the particular trade mark, brand or name of alcoholic liquor as
15 to which such right is granted, the geographical area or areas
16 for which such right is granted and the period of time for
17 which such rights are granted to such person. Each
18 manufacturer, non-resident dealer, distributor or importing
19 distributor, or foreign importer who is required to register
20 under this Section must furnish a copy of the registration
21 statement at the time of appointment to the person who has been
22 granted the right to sell alcoholic liquor at wholesale.
23 However, if a person who has been appointed the right to sell
24 alcoholic liquor at wholesale does not receive a copy of the
25 registration statement as required under this Section, such
26 person may file a registration statement with the State

1 Commission, provided that the person furnishes a copy of that
2 registration statement to the manufacturer, non-resident
3 dealer, distributor, importing distributor, or foreign
4 importer within 30 days of filing the registration statement.

5 The registration statement shall state:

6 (1) the name of the person appointed;

7 (2) the name of the manufacturer, non-resident dealer,
8 distributor, importing distributor, or foreign importer from
9 whom the person received the right to sell alcoholic liquor;

10 (3) the particular trade mark, brand, or name of alcoholic
11 liquor as to which the right to sell at wholesale is granted;
12 and

13 (4) the geographical areas for which the right to sell at
14 wholesale is granted.

15 Such manufacturer, non-resident dealer, distributor,
16 importing distributor, or foreign importer may grant the right
17 to sell at wholesale any trade mark, brand or name of any
18 alcoholic liquor in any geographical area to more than one
19 person. If the registration is received after the effective
20 date, the Commission shall treat the date the registration was
21 received in the Chicago office as the effective date. Such
22 registration shall be made on a form prescribed by the State
23 Commission and the State Commission may require such
24 registration to be on a form provided by it.

25 A non-resident dealer or foreign importer who is not a
26 manufacturer shall file the registration statement jointly

1 with the manufacturer identifying the person authorized by the
2 manufacturer to sign the registration statement on behalf of
3 the manufacturer.

4 No such registration shall be made in any other manner than
5 as is provided in this Section and only those persons
6 registered by the manufacturer, non-resident dealer,
7 distributor, importing distributor or foreign importer, shall
8 have the right to sell at wholesale in this State, the brand of
9 alcoholic liquor specified on the registration form.

10 However, a licensed Illinois distributor who has not been
11 registered to sell a brand of alcoholic liquor, but for a
12 period of 2 years prior to November 8, 1979 has been engaged in
13 the purchase of a brand for resale from a licensed Illinois
14 distributor who has the right to sell that brand at wholesale,
15 may continue to purchase and resell the brand at wholesale, and
16 may purchase from the same distributor and resell at wholesale
17 any new brands of the same manufacturer, provided that:

18 (1) Within 60 days after November 8, 1979 he identifies
19 the brand which he so purchased to the State Commission and
20 the Commission within 30 days thereafter verifies that the
21 purchases have occurred;

22 (2) Thereafter, he notifies the State Commission in
23 writing of any brands of the same manufacturer which he
24 wishes to purchase from the same distributor that were not
25 available for distribution on or before November 8, 1979,
26 and that the Commission within 30 days of such notification

1 verifies that the brand is a new brand of the same
2 manufacturer, and that the same licensed Illinois
3 distributor has the right to sell the new brand at
4 wholesale;

5 (3) His licensed business address is within the
6 geographical area for which the licensed Illinois
7 distributor from whom the purchases are made has the right
8 to sell said brand or brands of alcoholic liquor; and

9 (4) His sales are made within the geographical area for
10 which the licensed Illinois distributor from whom the
11 purchases are made has the right to sell the brand or
12 brands of alcoholic liquor and only to retail licensees
13 whose licensed premises are located within the
14 aforementioned geographical area.

15 No person to whom such right is granted shall sell at
16 wholesale in this State any alcoholic liquor bearing such trade
17 mark, brand or name outside of the geographical area for which
18 such person holds such selling right, as registered with the
19 State Commission, nor shall he sell such alcoholic liquor
20 within such geographical area to a retail licensee if the
21 premises specified in such retailer's license are located
22 outside such geographical area. Any licensed Illinois
23 distributor who has not been granted the right to sell any
24 alcoholic liquor at wholesale and is purchasing alcoholic
25 liquor from a person who has been granted the right to sell at
26 wholesale may sell and deliver only to retail licensees whose

1 licensed premises are within the same geographical area as the
2 person who has been granted the right to sell at wholesale.

3 No manufacturer, importing distributor, distributor,
4 non-resident dealer, or foreign importer shall sell or deliver
5 any package containing alcoholic liquor manufactured or
6 distributed by him for resale, unless the person to whom such
7 package is sold or delivered is authorized to receive such
8 package in accordance with the provisions of this Act.

9 (Source: P.A. 92-105, eff. 1-1-02.)

10 Section 10. The Beer Industry Fair Dealing Act is amended
11 by changing Section 7 as follows:

12 (815 ILCS 720/7) (from Ch. 43, par. 307)

13 Sec. 7. Reasonable compensation.

14 (1) Subject to the right of any party to an agreement to
15 pursue any remedy provided in Section 9, any ~~Any~~ brewer that
16 cancels, terminates or fails to renew any agreement, or
17 unlawfully denies approval of, or unreasonably withholds
18 consent, to any assignment, transfer or sale of a wholesaler's
19 business assets or voting stock or other equity securities,
20 except as provided in this Act, shall pay the wholesaler with
21 which it has an agreement pursuant to this Act reasonable
22 compensation for the fair market value of the wholesaler's
23 business with relation to the affected brand or brands. The
24 fair market value of the wholesaler's business shall include,

1 but not be limited to, its goodwill, if any.

2 (1.5) The provisions of this subsection (1.5) shall only
3 apply if the brewer agrees to pay reasonable compensation as
4 defined in subsection (1) and ~~when~~ the total annual volume of
5 all beer products supplied by a brewer to a wholesaler pursuant
6 to agreements between such brewer and wholesaler represents 15%
7 ~~20%~~ or less of the total annual volume of the wholesaler's
8 business for all beer products supplied by all brewers. For
9 purposes of this subsection (1.5) only, "annual volume" means
10 the volume of beer products sold by the wholesaler in the
11 12-month period immediately preceding receipt of the brewer's
12 written offer pursuant to this subsection (1.5).

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

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

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

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

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

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

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

14 (C) If the wholesaler elects expedited binding
15 arbitration but the brewer rejects, the brewer may proceed
16 under Section 9 for the purpose of determining reasonable
17 compensation. Upon determination of reasonable
18 compensation pursuant to Section 9, the brewer shall pay
19 the wholesaler the amount so determined. Until receiving
20 payment from the brewer of the amount so determined, the
21 wholesaler shall retain the affected brand or brands. If
22 (a) the brewer initiates a proceeding under Section 9
23 within 90 days after the wholesaler rejects the offer to
24 arbitrate, (b) the wholesaler retains the affected brand or
25 brands for a period of 2 years from the date the wholesaler
26 rejects the offer to arbitrate, (c) the amount of

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

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

1 (Source: P.A. 89-716, eff. 2-21-97.)

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.