

2003 DRAFTING REQUEST

Bill

Received: 01/21/2004

Received By: agary

Wanted: As time permits

Identical to LRB:

For: Scott Fitzgerald (608) 266-5660

By/Representing: Judy (aide)

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

Subject: Beverages

Extra Copies:

Submit via email: YES

Requester's email: Sen.Fitzgerald@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Compensation for loss of brand by beer wholesalers

Instructions:

Companion bill to 03-4061

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 02/11/2004	kfollett 02/11/2004		_____			
/1	agary 02/16/2004	wjackson 02/16/2004	pgreensl 02/11/2004	_____	sbasford 02/11/2004		
/2			rschluet	_____	sbasford	sbasford	

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			02/17/2004 _____ _____ _____		02/17/2004	02/17/2004 sbasford 02/17/2004	
/3	agary 02/19/2004 agary 02/23/2004	kfollett 02/19/2004 wjackson 02/23/2004	pgreensl 02/19/2004 _____ _____ _____		lemery 02/19/2004	lemery 02/19/2004	
/4			rschluet 02/23/2004 _____ _____		sbasford 02/23/2004	sbasford 02/23/2004	

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*none
needed*

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/2			rschluet		sbasford	sbasford	

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Page 2

LRB-4078

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FE Sent For:

<END>

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turned
in 2/11

4078/1

LRB-~~4078~~

ARG:kjf: ~~rg~~

R M N R

2003 BILL

Reger

1 AN ACT to create 125.33 (10) of the statutes; relating to: compensation of
2 fermented malt beverages wholesalers for termination of distribution rights.

Analysis by the Legislative Reference Bureau

Under current law, a brewer or out-of-state shipper may sell fermented malt beverages (beer) only to a wholesaler. A wholesaler is a person who holds a license to sell beer to retailers and to other wholesalers.

Currently, under the Wisconsin Fair Dealership Law (WFDL), which applies to most types of product distributors, a distributor who operates under a contract or agreement, expressed or implied, with a product supplier (known as the "grantor") for distribution of the grantor's products, and that maintains a sufficiently close continuing financial interest ("community of interest") with the grantor, is considered a "dealer." A dealer may not have its distribution rights terminated, cancelled, not renewed, or substantially changed in terms of competitive circumstances without good cause. The burden of establishing good cause lies with the grantor. "Good cause" means failure by the dealer to comply substantially with essential and reasonable requirements imposed, or sought to be imposed, upon the dealer by the grantor, which requirements are not discriminatory as compared to their application by the grantor to other similarly situated dealers. "Good cause" also means bad faith by the dealer in carrying out the grantor's distribution business. A grantor must also provide a dealer with notice of an intent to terminate, cancel, fail to renew, or substantially change the competitive circumstances of the dealer's distribution rights, and the dealer is entitled to an opportunity to cure any deficiency alleged by the grantor. A grantor that terminates, cancels, fails to renew, or

BILL

substantially changes the dealer's distribution rights without good cause may be held liable, and injunctive relief preventing the grantor's actions may be obtained. Under the WFDL, there is a special category of dealerships for wholesalers of intoxicating liquor and, for this special category, the intoxicating liquor wholesaler does not need to show a "community of interest" with the grantor to be considered a dealer. There is no special category of dealership under the WFDL for beer wholesalers, but beer wholesalers who qualify under the general provisions of the WFDL may obtain relief under the WFDL.

This bill provides beer wholesalers with certain protections of distribution rights in addition to those afforded under the WFDL. With limited exceptions, the bill provides wholesalers with compensable and perpetual rights to the brands of beer they currently distribute within the territory of current distribution. Under the bill, with the exceptions described below, if a brewer or out-of-state shipper terminates an agreement for distribution of a brand of beer within a territory and chooses to have its brand of beer distributed in the same territory by a different wholesaler, the successor wholesaler must compensate the terminated wholesaler for the fair market value of the distribution rights for the territory without time limitation on projected future value. If the terminated wholesaler and successor wholesaler cannot agree on the amount of compensation to be paid to the terminated wholesaler, upon demand of either party, the dispute must be submitted for binding arbitration, which must generally be conducted within 90 days of the demand for arbitration. Any award of compensation by the arbitrator must be paid within 30 days of the arbitrator's decision, and the parties must each pay an equal share of the costs of arbitration. Under the exceptions, a successor wholesaler is not required to compensate a terminated wholesaler if: the brewer or out-of-state shipper already compensated the terminated wholesaler for distribution rights by means of a negotiated settlement; the brewer or out-of-state shipper terminated the wholesaler's agreement for material fraudulent conduct or substantial misrepresentations, conviction of a felony crime, or knowing distribution of products outside the terminated wholesaler's authorized territory; or the terminated wholesaler qualifies under the criteria for seeking relief under the WFDL. A terminated wholesaler may seek both the relief provided in the bill through arbitration and relief under existing provisions of the WFDL, but may not receive compensation under both. If a terminated wholesaler files a declaratory judgment action to determine whether the terminated wholesaler qualifies under the criteria for seeking relief under the WFDL and also seeks relief as provided in the bill, the arbitration proceeding shall be stayed if it has commenced, or delayed if not yet commenced, pending a determination in the declaratory judgment action, and any decision in the declaratory judgment action shall be binding in the arbitration.

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A violation of the provisions of the bill is enforceable only between the parties and may not result in any penalty or other action against a wholesaler or wholesaler's license.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 125.33 (10) of the statutes is created to read:

2 125.33 (10) COMPENSATION FOR TERMINATION OF WHOLESALER DISTRIBUTION
3 RIGHTS. (a) In this subsection:

4 1. "Brand" means any word, name, group of letters, symbols, or combination
5 thereof, including the name of the brewer if the brewer's name is also a significant
6 part of the product name, adopted and used by a brewer to identify a specific
7 fermented malt beverage product and to distinguish that product from other
8 fermented malt beverages produced by that brewer or other brewers.

9 2. "Discontinued brand" means, with respect to a terminated wholesaler, any
10 brand of fermented malt beverages for which a brewer, brewer's agent, or holder of
11 an out-of-state shipper's permit has terminated, cancelled, or failed to renew an
12 agreement, whether oral or written, with the wholesaler to supply that brand.

13 3. "Successor wholesaler" means any wholesaler who enters into an agreement,
14 whether oral or written, to obtain a supply of a brand of fermented malt beverages
15 from a brewer, brewer's agent, or holder of an out-of-state shipper's permit within
16 2 years of the date that the brewer, brewer's agent, or holder of an out-of-state
17 shipper's permit has terminated, cancelled, or failed to renew an agreement,
18 whether oral or written, with a terminated wholesaler to supply that same brand of
19 fermented malt beverages for distribution within, in whole or in part, the same
20 territory.

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1 4. "Terminated wholesaler" means a wholesaler with whom a brewer, brewer's
2 agent, or holder of an out-of-state shipper's permit has terminated, cancelled, or
3 failed to renew an agreement, whether oral or written, to supply a brand of fermented
4 malt beverages to that wholesaler.

5 (b) Except as provided in par. (c) and subject to pars. (d) and (e), a successor
6 wholesaler shall compensate a terminated wholesaler for the fair market value of the
7 terminated wholesaler's distribution rights to any discontinued brand of fermented
8 malt beverages assumed by the successor wholesaler for the same territory. If the
9 terminated wholesaler's distribution rights to any discontinued brand of fermented
10 malt beverages are divided among 2 or more successor wholesalers, each successor
11 wholesaler shall compensate the terminated wholesaler for the fair market value of
12 the distribution rights to any discontinued brand of fermented malt beverages
13 assumed by that successor wholesaler for the applicable part of the same territory.

14 (c) A successor wholesaler is not required to compensate a terminated
15 wholesaler under par. (b) if any of the following apply:

16 1. The terminated wholesaler has been compensated, through a negotiated
17 settlement, by the brewer, brewer's agent, or holder of an out-of-state shipper's
18 permit for the discontinued brand.

19 2. The terminated wholesaler's agreement was terminated, cancelled, or not
20 renewed for any of the following reasons:

21 a. The wholesaler or a principal of the wholesaler engaged in material
22 fraudulent conduct or made substantial misrepresentations in its dealings with the
23 brewer, brewer's agent, or holder of an out-of-state shipper's permit or with others
24 regarding any brand of the brewer, brewer's agent, or holder of an out-of-state
25 shipper's permit.

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1 b. The wholesaler or a principal of the wholesaler was convicted of, or pleaded
2 no contest to, a felony crime.

3 c. The wholesaler or a principal of the wholesaler knowingly distributed any
4 brand of the brewer, brewer's agent, or holder of an out-of-state shipper's permit
5 outside the territory authorized by the brewer, brewer's agent, or holder of an
6 out-of-state shipper's permit for distribution of the brand.

7 3. Subject to par. (e), the terminated wholesaler is a dealer, as defined in s.
8 135.02 (2), whose business relationship as to any discontinued brand constitutes a
9 dealership, as defined in s. 135.02 (3) (a).

10 (d) If a terminated wholesaler and a successor wholesaler agree to the fair
11 market value of the terminated wholesaler's distribution rights to any discontinued
12 brand of fermented malt beverages assumed by the successor wholesaler for the
13 same territory, the successor wholesaler shall pay the agreed upon sum to the
14 terminated wholesaler within 30 days of the date on which the parties reach the
15 agreement. If the parties cannot agree on the compensation due to the terminated
16 wholesaler, upon demand of either party, the parties shall submit their dispute for
17 binding arbitration, subject to ch. 788, under the commercial arbitration rules of the
18 American Arbitration Association if possible or, if not possible, by a nationally
19 recognized arbitration association. The arbitration shall be conducted on an
20 expedited basis to the extent an expedited proceeding is available. Subject to par. (e),
21 the arbitration shall be conducted within 90 days of the date that any party provides
22 the other party with written demand for binding arbitration, unless this time period
23 is extended by mutual agreement of the parties or by the arbitrator. If the arbitrator
24 awards compensation to the terminated wholesaler under this paragraph, the
25 successor wholesaler shall pay the awarded compensation to the terminated

BILL

1 wholesaler within 30 days of the date of the arbitrator's decision. The terminated
2 wholesaler and the successor wholesaler shall each pay an equal share of the costs
3 of arbitration.

4 (e) 1. Notwithstanding par. (c) 3. and subject to subd. 2., a terminated
5 wholesaler may seek relief under both this subsection and ch. 135 but may not
6 receive compensation under both this subsection and ch. 135. A terminated
7 wholesaler who receives compensation under this subsection may not subsequently
8 receive compensation or obtain injunctive relief under s. 135.06 or 135.065.

9 2. A terminated wholesaler may seek a declaratory judgment as to whether it
10 is a dealer, as defined in s. 135.02 (2), whose business relationship as to any
11 discontinued brand constitutes a dealership, as defined in s. 135.02 (3) (a), and a
12 decision in such a declaratory judgment action shall be binding in any arbitration
13 under par. (d). If a declaratory judgment action is filed to determine whether the
14 terminated wholesaler may obtain relief under ch. 135, the time period specified in
15 par. (d) for conducting arbitration shall be extended while the declaratory judgment
16 action is pending, and, if arbitration has already commenced, the arbitration
17 proceeding shall be stayed while the declaratory judgment action is pending.

18 (f) Notwithstanding s. 125.11, 125.12, 125.14, and 125.145, a violation of this
19 subsection shall not be enforceable by the department or any law enforcement officer,
20 and may not result in any penalty under s. 125.11 or action against a license under
21 s. 125.12.

SECTION 2. Initial applicability.

22 (1) This act first applies to agreements terminated, cancelled, or not renewed
23 on the effective date of this subsection.
24

25 (END)

D-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

4078/1dn
LRB-~~4078/1dn~~
ARG:kjf:pv

February 10, 2004

7
ATTN: ~~REDACTED~~ Judi Rhodes-Engels

This bill does not require that a "successor wholesaler" be given any notice when it enters into a distribution agreement with a brewer, brewer's agent, or holder of an out-of-state shipper's permit that the successor wholesaler may potentially be liable to a terminated wholesaler under this provision. Is this consistent with your intent?

The initial applicability provision applies the bill to all brewer-wholesaler agreements terminated, cancelled, or not renewed after the bill's effective date. This means that the bill would apply immediately to existing agreements. If you would like a "phase in" so that the bill only applies to new agreements formed after the bill's effective date, the initial applicability provision could be revised to apply only to agreements entered into after the bill becomes effective.

The bill makes some changes to the language proposed in the drafting instructions to create more consistency between the terms used within the bill and more consistency with terms used elsewhere in the statutes and to reduce ambiguity.

This bill may significantly restrict businesses's freedom to contract in a competitive manner and, to the extent it is applied to existing contracts, may be subject to challenge on the basis of impairment of existing contractual obligations. Under the bill, a brewer that has the right under an existing contract to terminate the contract with a wholesaler for cause or to decide not to renew the contract upon the expiration of the contract term may, as a practical matter, be unable to exercise these contract rights because severing ties with the wholesaler would require the replacement wholesaler to pay the terminated wholesaler for lost business in perpetuity and this may make it impossible for the brewer to find a replacement wholesaler, thus forcing the brewer to continue the business relationship it is otherwise entitled to (and wants to) sever.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

DRAFTER'S NOTE
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LRB-4078/1dn
ARG:kjf:pg

February 11, 2004

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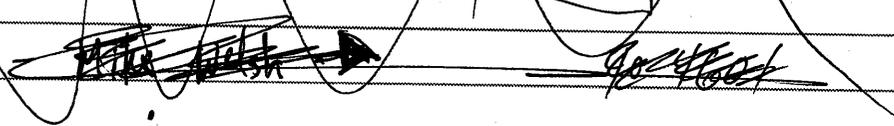
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Judi

4078

6-5660



H/c w/ Judi

2/16/04

- 4078

6-5660

- wants redraft ~~identical~~ identical
to 03-4061/2 as soon as
4061/2 is done

Needed
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3 RIGHTS. (a) In this subsection:

4 1. "Brand" means any word, name, group of letters, symbols, or combination
5 thereof, including the name of the brewer if the brewer's name is also a significant
6 part of the product name, adopted and used by a brewer to identify a specific
7 fermented malt beverage product and to distinguish that product from other
8 fermented malt beverages produced by that brewer or other brewers.

9 2. "Discontinued brand" means, with respect to a terminated wholesaler, any
10 brand of fermented malt beverages for which a brewer, brewer's agent, or holder of
11 an out-of-state shipper's permit has terminated, cancelled, or failed to renew an
12 agreement, whether oral or written, with the wholesaler to supply that brand.

13 3. "Successor wholesaler" means any wholesaler who enters into an agreement,
14 whether oral or written, to obtain a supply of a brand of fermented malt beverages
15 from a brewer, brewer's agent, or holder of an out-of-state shipper's permit within
16 2 years of the date that the brewer, brewer's agent, or holder of an out-of-state
17 shipper's permit has terminated, cancelled, or failed to renew an agreement,
18 whether oral or written, with a terminated wholesaler to supply that same brand of
19 fermented malt beverages for distribution within, in whole or in part, the same
20 territory.

BILL

1 4. "Terminated wholesaler" means a wholesaler with whom a brewer, brewer's
2 agent, or holder of an out-of-state shipper's permit has terminated, cancelled, or
3 failed to renew an agreement, whether oral or written, to supply a brand of fermented
4 malt beverages to that wholesaler.

5 (b) Except as provided in par. (c) and subject to pars. (d) and (e), a successor
6 wholesaler shall compensate a terminated wholesaler for the fair market value of the
7 terminated wholesaler's distribution rights to any discontinued brand of fermented
8 malt beverages assumed by the successor wholesaler for the same territory. If the
9 terminated wholesaler's distribution rights to any discontinued brand of fermented
10 malt beverages are divided among 2 or more successor wholesalers, each successor
11 wholesaler shall compensate the terminated wholesaler for the fair market value of
12 the distribution rights to any discontinued brand of fermented malt beverages
13 assumed by that successor wholesaler for the applicable part of the same territory.

14 (c) A successor wholesaler is not required to compensate a terminated
15 wholesaler under par. (b) if any of the following apply:

16 1. The terminated wholesaler has been compensated, through a negotiated
17 settlement, by the brewer, brewer's agent, or holder of an out-of-state shipper's
18 permit for the discontinued brand.

19 2. The terminated wholesaler's agreement was terminated, cancelled, or not
20 renewed for any of the following reasons:

21 a. The wholesaler or a principal of the wholesaler engaged in material
22 fraudulent conduct or made substantial misrepresentations in its dealings with the
23 brewer, brewer's agent, or holder of an out-of-state shipper's permit or with others
24 regarding any brand of the brewer, brewer's agent, or holder of an out-of-state
25 shipper's permit.

BILL

1 b. The wholesaler or a principal of the wholesaler was convicted of, or pleaded
2 no contest to, a felony crime.

3 c. The wholesaler or a principal of the wholesaler knowingly distributed any
4 brand of the brewer, brewer's agent, or holder of an out-of-state shipper's permit
5 outside the territory authorized by the brewer, brewer's agent, or holder of an
6 out-of-state shipper's permit for distribution of the brand.

7 3. Subject to par. (e), the terminated wholesaler is a dealer, as defined in s.
8 135.02 (2), whose business relationship as to any discontinued brand constitutes a
9 dealership, as defined in s. 135.02 (3) (a).

10 (d) If a terminated wholesaler and a successor wholesaler agree to the fair
11 market value of the terminated wholesaler's distribution rights to any discontinued
12 brand of fermented malt beverages assumed by the successor wholesaler for the
13 same territory, the successor wholesaler shall pay the agreed upon sum to the
14 terminated wholesaler within 30 days of the date on which the parties reach the
15 agreement. If the parties cannot agree on the compensation due to the terminated
16 wholesaler, upon written demand of either party, the parties shall submit their
17 dispute for binding arbitration, subject to ch. 788, under the commercial arbitration
18 rules of the American Arbitration Association if possible or, if not possible, by a
19 nationally recognized arbitration association. The arbitration shall be conducted on
20 an expedited basis to the extent an expedited proceeding is available. Subject to par.
21 (e), the arbitration shall be conducted within 90 days of the date that any party
22 provides the other party with written demand for binding arbitration, unless this
23 time period is extended by mutual agreement of the parties or by the arbitrator. If
24 the arbitrator awards compensation to the terminated wholesaler under this
25 paragraph, the successor wholesaler shall pay the awarded compensation to the

BILL

1 terminated wholesaler within 30 days of the date of the arbitrator's decision. The
2 terminated wholesaler and the successor wholesaler shall each pay an equal share
3 of the costs of arbitration.

4 (e) 1. Notwithstanding par. (c) 3. and subject to subd. 2., a terminated
5 wholesaler may seek relief under both this subsection and ch. 135 but may not
6 receive compensation under both this subsection and ch. 135. A terminated
7 wholesaler who receives compensation under this subsection may not subsequently
8 receive compensation or obtain injunctive relief under s. 135.06 or 135.065.

9 2. At any time prior to 30 days following a terminated wholesaler's receipt from
10 the successor wholesaler of a written demand for arbitration under par. (d) or, if the
11 terminated wholesaler has first made written demand for arbitration, at any time
12 prior to 30 days following receipt of the successor wholesaler's written response in
13 arbitration, a terminated wholesaler may file a declaratory judgment action in a
14 court of competent jurisdiction seeking a determination of whether it is a dealer, as
15 defined in s. 135.02 (2), whose business relationship as to any discontinued brand
16 constitutes a dealership, as defined in s. 135.02 (3) (a), such that relief may be
17 available under ch. 135 but, under par. (c) 3., would not be available under this
18 subsection. A decision in such a declaratory judgment action shall be binding in any
19 arbitration under par. (d). If a declaratory judgment action is filed to determine
20 whether the terminated wholesaler may obtain relief under ch. 135, the time period
21 specified in par. (d) for conducting arbitration shall be extended while the
22 declaratory judgment action is pending, and, if arbitration has already commenced,
23 the arbitration proceeding shall be stayed while the declaratory judgment action is
24 pending. If no declaratory judgment action is filed, there shall be a presumption in
25 the arbitration proceeding that par. (c) 3. is not applicable in the arbitration

BILL

1 proceeding unless the party that has not made the initial demand for arbitration
2 asserts in its written response in arbitration that par. (c) 3. is applicable in the
3 arbitration proceeding. If no declaratory judgment action is filed and a party asserts
4 that par. (c) 3. is applicable in the arbitration proceeding, the arbitrator shall decide
5 the issue.

6 (f) Notwithstanding s. 125.11, 125.12, 125.14, and 125.145, a violation of this
7 subsection shall not be enforceable by the department or any law enforcement officer,
8 and may not result in any penalty under s. 125.11 or action against a license under
9 s. 125.12.

10 **SECTION 2. Initial applicability.**

11 (1) This act first applies to agreements terminated, cancelled, or not renewed
12 on the effective date of this subsection.

13 (END)

2/18/04

11:00 a

He from Judi - VM

- need redraft ; sending stuff over
- needed today if possible for exec



SCOTT FITZGERALD
 Wisconsin State Senator
 13th Senate District

FAX COVER SHEET

**State Senator
 Scott Fitzgerald**

Tom Rhatican
 Cindy Block
 Judi Rhodes-Engels

Date • 2/18/10

To • Aaron Gargy

FAX Number • 264-6948

From •

FAX Number •

Comments •

please draft as 8/3 to

LRB 4061 & 4078

Number of pages including cover sheet .

If you do not receive all of the pages, please call us at 608 266 5660.

Capitol Office:
 State Capitol, P.O. Box 7882
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 Tel: 608 266 5660
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 webpage:
 http://www.legis.state.wi.us/
 senate/sen13/sen13.html

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8. Pages 1312 and 1313, delete SECTIONS 2827 and 2828, relocate them in chapter 125 of the statutes and revise the language of these provisions.

Section 2813. 125.33 (10) is created to read:

1125.33 (10) COMPENSATION FOR LOSS OF BRAND

- (a)1. "Brand" means any word, name, group of letters, symbols, or combination thereof, including the name of the brewer if the brewer's name is also a significant part of the product name, adopted and used by a brewer to identify a specific fermented malt beverage product and to distinguish that product from other fermented malt beverages produced by that brewer or other brewers.
2. "Discontinued brand" means, with respect to a terminated wholesaler, any brand for which a brewer, or brewer's agent or holder of an out-of-state shipper's permit has terminated, canceled, or failed to renew an agreement, whether oral or written, with that wholesaler to supply that brand.
3. "Successor wholesaler" means any wholesaler who enters an agreement, whether oral or written, to obtain a supply of a brand from a brewer, a brewer's agent or holder of an out-of-state shipper's permit after the brewer, the brewer's agent or holder of an out-of-state permit has terminated, canceled or failed to renew an agreement, whether oral or written, with a terminated wholesaler to supply that same brand of fermented malt beverages. [deleted]
4. "Terminated wholesaler" means a wholesaler with whom a brewer, a brewer's agent or holder of an out-of-state shipper's permit has canceled, terminated or failed to renew an agreement, whether oral or written, to supply a brand of fermented malt beverages to that wholesaler. A terminated wholesaler does not include a wholesaler whose agreement was canceled, terminated, or not renewed because the wholesaler or a principal of the wholesaler (1) engaged in material fraudulent conduct or substantial misrepresentation in its dealings with the brewer or with others concerning the brewer's brands; or (2) has been convicted of or pleaded no contest to a felony; or (3) knowingly sells the brewer's brands outside the wholesaler's authorized

new territory for those brands; or (4) assigns or attempts to assign the assets of the wholesaler operation for the benefit of creditors, institutes bankruptcy proceedings, dissolves or liquidates the wholesale operation, or becomes insolvent.

changed (b) A successor wholesaler shall pay the terminated wholesaler the fair market value of the terminated wholesaler's distribution rights to any discontinued brand assumed by the successor wholesaler. If the terminated wholesaler's right to sell a discontinued brand is divided among two or more successor wholesalers, each successor wholesaler shall pay the terminated wholesaler the fair market value of the distribution rights to the discontinued brand obtained by that successor wholesaler. In no event shall a terminated wholesaler receive compensation from a brewer and from the successor wholesaler in excess of the fair market value of the discontinued brand; the compensation due the terminated wholesaler for the fair market value of the discontinued brand is to be reduced by any amounts paid by the brewer to the terminated wholesaler. This subparagraph shall not apply if the terminated wholesaler has been compensated in accordance with its agreement with the brewer.

changed (c) The terminated wholesaler and the successor wholesaler may agree to a fair market value of the terminated wholesaler's business related to a discontinued brand and the successor wholesaler shall pay that sum to the terminated wholesaler within 30 days after the date that the parties agree on the fair market value. If the parties cannot agree on the compensation due the terminated wholesaler, the parties shall submit their dispute to binding arbitration subject to the expedited process under the commercial arbitration rule of the American Arbitration Association. The arbitration shall commence within 90 days after the successor wholesaler obtains rights to receive a supply of a brand of fermented malt beverages, that is a discontinued brand, of the terminated wholesaler, unless extended by the parties or the arbitration. The terminated wholesaler and the successor wholesaler shall each pay 50% of the costs of arbitration.

(d) This subsection does not apply to any business relationship to which ch. 135 applies.

(End)



Needed
by 2/20
A.M.

RMR

P-Note

2003 BILL

Regen

1 AN ACT *to create* 125.33 (10) of the statutes; **relating to:** compensation of
2 fermented malt beverages wholesalers for termination of distribution rights.

Analysis by the Legislative Reference Bureau

Under current law, a brewer or out-of-state shipper may sell fermented malt beverages (beer) only to a wholesaler. A wholesaler is a person who holds a license to sell beer to retailers and to other wholesalers.

Currently, under the Wisconsin Fair Dealership Law (WFDL), which applies to most types of product distributors, a distributor who operates under a contract or agreement, expressed or implied, with a product supplier (known as the "grantor") for distribution of the grantor's products, and that maintains a sufficiently close continuing financial interest ("community of interest") with the grantor, is considered a "dealer." A dealer may not have its distribution rights terminated, cancelled, not renewed, or substantially changed in terms of competitive circumstances without good cause. The burden of establishing good cause lies with the grantor. "Good cause" means failure by the dealer to comply substantially with essential and reasonable requirements imposed, or sought to be imposed, upon the dealer by the grantor, which requirements are not discriminatory as compared to their application by the grantor to other similarly situated dealers. "Good cause" also means bad faith by the dealer in carrying out the grantor's distribution business. A grantor must also provide a dealer with notice of an intent to terminate, cancel, fail to renew, or substantially change the competitive circumstances of the dealer's distribution rights, and the dealer is entitled to an opportunity to cure any deficiency alleged by the grantor. A grantor that terminates, cancels, fails to renew, or

BILL

after the successor wholesaler obtains its distribution rights

substantially changes the dealer's distribution rights without good cause may be held liable, and injunctive relief preventing the grantor's actions may be obtained. Under the WFDL, there is a special category of dealerships for wholesalers of intoxicating liquor and, for this special category, the intoxicating liquor wholesaler does not need to show a "community of interest" with the grantor to be considered a dealer. There is no special category of dealership under the WFDL for beer wholesalers, but beer wholesalers who qualify under the general provisions of the WFDL may obtain relief under the WFDL.

This bill provides beer wholesalers with certain protections of distribution rights in addition to those afforded under the WFDL. With limited exceptions, the bill provides wholesalers with compensable and perpetual rights to the brands of beer they currently distribute within the territory of current distribution. Under the bill, with the exceptions described below, if a brewer or out-of-state shipper terminates an agreement for distribution of a brand of beer within a territory and chooses to have its brand of beer distributed in the same territory by a different wholesaler, the successor wholesaler must compensate the terminated wholesaler for the fair market value of the distribution rights for the territory without time limitation on projected future value. If the terminated wholesaler and successor wholesaler cannot agree on the amount of compensation to be paid to the terminated wholesaler, upon written demand of either party, the dispute must be submitted for binding arbitration, which must generally be ~~conducted~~ *commenced* within 90 days of the demand for arbitration. Any award of compensation by the arbitrator must be paid within 30 days of the arbitrator's decision, and the parties must each pay an equal share of the costs of arbitration. Under the exceptions, a successor wholesaler is not required to compensate a terminated wholesaler if: the brewer or out-of-state shipper already compensated the terminated wholesaler for distribution rights, *under an agreement* ~~by means of a negotiated settlement~~, the brewer or out-of-state shipper terminated the wholesaler's agreement for material fraudulent conduct or substantial misrepresentations, conviction of a felony crime, ~~or~~ *or* knowing distribution of products outside the terminated wholesaler's authorized territory, ~~or~~ the terminated wholesaler qualifies under the criteria for seeking relief under the WFDL.

~~terminated wholesaler may seek both the relief provided in the bill through arbitration and relief under existing provisions of the WFDL, but may not receive compensation under both. A terminated wholesaler may, within a specified time period, file a declaratory judgment action in a court of competent jurisdiction to determine whether the terminated wholesaler qualifies under the criteria for seeking relief under the WFDL. If the terminated wholesaler files such a declaratory judgment action and seeks relief as provided in the bill, the arbitration proceeding shall be stayed if it has commenced, or delayed if not yet commenced, pending a determination in the declaratory judgment action, and any decision in the declaratory judgment action shall be binding in the arbitration. If no declaratory judgment action is filed, relief under the WFDL is presumed to be unavailable unless the responding party asserts otherwise in its written response in the arbitration, in which event the arbitrator decides the issue.~~

fully

or

*insert
ANAL*

BILL

A violation of the provisions of the bill is enforceable only between the parties and may not result in any penalty or other action against a wholesaler or wholesaler's license.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 125.33 (10) of the statutes is created to read:

2 **125.33 (10) COMPENSATION FOR TERMINATION OF WHOLESALER DISTRIBUTION**
3 **RIGHTS.** (a) In this subsection:

4 1. "Brand" means any word, name, group of letters, symbols, or combination
5 thereof, including the name of the brewer if the brewer's name is also a significant
6 part of the product name, adopted and used by a brewer to identify a specific
7 fermented malt beverage product and to distinguish that product from other
8 fermented malt beverages produced by that brewer or other brewers.

9 2. "Discontinued brand" means, with respect to a terminated wholesaler, any
10 brand of fermented malt beverages for which a brewer, brewer's agent, or holder of
11 an out-of-state shipper's permit has terminated, cancelled, or failed to renew an
12 agreement, whether oral or written, with the wholesaler to supply that brand.

13 3. "Successor wholesaler" means any wholesaler who enters into an agreement,
14 whether oral or written, to obtain a supply of a brand of fermented malt beverages
15 from a brewer, brewer's agent, or holder of an out-of-state shipper's permit ~~within~~
16 ~~2 years of the date that~~ ^{after} the brewer, brewer's agent, or holder of an out-of-state
17 shipper's permit has terminated, cancelled, or failed to renew an agreement,
18 whether oral or written, with a terminated wholesaler to supply that same brand of
19 fermented malt beverages for distribution within, in whole or in part, the same
20 territory.

BILL

SECTION 1

, less any amount paid to the terminated wholesaler by the brewer, brewer's agent, or holder of an out-of-state shipper's permit for the discontinued brand

1 4. "Terminated wholesaler" means a wholesaler with whom a brewer, brewer's
2 agent, or holder of an out-of-state shipper's permit has terminated, cancelled, or
3 failed to renew an agreement, whether oral or written, to supply a brand of fermented
4 malt beverages to that wholesaler.

5 (b) Except as provided in par. (c) and subject to pars. (d) and (e), a successor
6 wholesaler shall compensate a terminated wholesaler for the fair market value of the
7 terminated wholesaler's distribution rights to any discontinued brand of fermented
8 malt beverages assumed by the successor wholesaler for the same territory. If the
9 terminated wholesaler's distribution rights to any discontinued brand of fermented
10 malt beverages are divided among 2 or more successor wholesalers, each successor
11 wholesaler shall compensate the terminated wholesaler for the fair market value of
12 the distribution rights to any discontinued brand of fermented malt beverages
13 assumed by that successor wholesaler for the applicable part of the same territory.

14 (c) A successor wholesaler is not required to compensate a terminated
15 wholesaler under par. (b) if any of the following apply: *fully*

16 1. The terminated wholesaler has been ~~compensated through a negotiated~~
17 ~~settlement~~, by the brewer, brewer's agent, or holder of an out-of-state shipper's

18 permit for the discontinued brand *under an agreement between the brewer, brewer's agent,*
19 *or holder of an out-of-state shipper's permit and*

20 2. The terminated wholesaler's agreement was terminated, cancelled, or not
21 renewed for any of the following reasons:

22 a. The wholesaler or a principal of the wholesaler engaged in material
23 fraudulent conduct or made substantial misrepresentations in its dealings with the
24 brewer, brewer's agent, or holder of an out-of-state shipper's permit or with others
25 regarding any brand of the brewer, brewer's agent, or holder of an out-of-state
shipper's permit.

*insert
4-13*

*the
terminated
wholesaler*

BILL

1 b. The wholesaler or a principal of the wholesaler was convicted of, or pleaded
2 no contest to, a felony crime.

3 c. The wholesaler or a principal of the wholesaler knowingly distributed any
4 brand of the brewer, brewer's agent, or holder of an out-of-state shipper's permit
5 outside the territory authorized by the brewer, brewer's agent, or holder of an
6 out-of-state shipper's permit for distribution of the brand.

Insert
5-6

Move
to
6-3

7 ~~Subject to paragraph~~ the terminated wholesaler is a dealer, as defined in s.
8 135.02 (2), whose business relationship as to any discontinued brand constitutes a
9 dealership, as defined in s. 135.02 (3) (a).

10 (d) If a terminated wholesaler and a successor wholesaler agree to the fair
11 market value of the terminated wholesaler's distribution rights to any discontinued
12 brand of fermented malt beverages assumed by the successor wholesaler for the
13 same territory, the successor wholesaler shall pay the agreed upon sum to the
14 terminated wholesaler within 30 days of the date on which the parties reach the
15 agreement. If the parties cannot agree on the compensation due to the terminated
16 wholesaler, upon written demand of either party, the parties shall submit their
17 dispute for binding arbitration, subject to ch. 788, under the commercial arbitration
18 rules of the American Arbitration Association if possible or, if not possible, by a
19 nationally recognized arbitration association. The arbitration shall be conducted on
20 an expedited basis to the extent an expedited proceeding is available. ~~Subject to par.~~

21 ~~the arbitration shall be conducted~~ ^{commence} within 90 days ~~of the date that any party~~
22 ~~provides the other party with written demand for binding arbitration,~~ unless this
23 time period is extended by mutual agreement of the parties or by the arbitrator. If
24 the arbitrator awards compensation to the terminated wholesaler under this
25 paragraph, the successor wholesaler shall pay the awarded compensation to the

after the successor wholesaler obtains rights to receive a supply of a brand of fermented malt beverages, that is a discontinued brand of fermented malt beverages, of the terminated wholesaler,

BILL

1 terminated wholesaler within 30 days of the date of the arbitrator's decision. The
 2 terminated wholesaler and the successor wholesaler shall each pay an equal share
 3 of the costs of arbitration.

Moved
from
5-7

4 (e) ~~Notwithstanding par. (c) 3. and subject to subd. 2, a terminated~~

5 wholesaler may seek relief under both this subsection and ch. 135 but may not
 6 receive compensation under both this subsection and ch. 135. A terminated
 7 wholesaler who receives compensation under this subsection may not subsequently
 8 receive compensation or obtain injunctive relief under s. 135.06 or 135.065.

9 2. At any time prior to 30 days following a terminated wholesaler's receipt from
 10 the successor wholesaler of a written demand for arbitration under par. (d) or, if the
 11 terminated wholesaler has first made written demand for arbitration, at any time
 12 prior to 30 days following receipt of the successor wholesaler's written response in
 13 arbitration, a terminated wholesaler may file a declaratory judgment action in a
 14 court of competent jurisdiction seeking a determination of whether it is a dealer, as
 15 defined in s. 135.02 (2), whose business relationship as to any discontinued brand
 16 constitutes a dealership, as defined in s. 135.02 (3) (a), such that relief may be
 17 available under ch. 135 but, under par. (c) 3., would not be available under this
 18 subsection. A decision in such a declaratory judgment action shall be binding in any
 19 arbitration under par. (d). If a declaratory judgment action is filed to determine
 20 whether the terminated wholesaler may obtain relief under ch. 135, the time period
 21 specified in par. (d) for conducting arbitration shall be extended while the
 22 declaratory judgment action is pending, and, if arbitration has already commenced,
 23 the arbitration proceeding shall be stayed while the declaratory judgment action is
 24 pending. If no declaratory judgment action is filed, there shall be a presumption in
 25 the arbitration proceeding that par. (c) 3. is not applicable in the arbitration

This subsection does not apply if

BILL

1 proceeding unless the party that has not made the initial demand for arbitration
2 asserts in its written response in arbitration that par. (c) 3. is applicable in the
3 arbitration proceeding. If no declaratory judgment action is filed and a party asserts
4 that par. (c) 3. is applicable in the arbitration proceeding, the arbitrator shall decide
5 the issue.

6 (f) Notwithstanding s. 125.11, 125.12, 125.14, and 125.145, a violation of this
7 subsection shall not be enforceable by the department or any law enforcement officer,
8 and may not result in any penalty under s. 125.11 or action against a license under
9 s. 125.12.

SECTION 2. Initial applicability.

10
11 (1) This act first applies to agreements terminated, cancelled, or not renewed
12 on the effective date of this subsection.

13 (END)

D - Note

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4078/3ins
ARG:.....

INSERT ANAL:

(no R), or insolvency or liquidation of the terminated wholesaler's business. The amount of compensation due to the terminated wholesaler from the successor wholesaler must also be reduced by any amount paid to the terminated wholesaler by the brewer or out-of-state shipper for the discontinued brand.

⊕ The provisions of the bill do not apply if

INSERT 4-13:

(no R) A terminated wholesaler may not receive under this paragraph total compensation from the successor wholesaler and brewer, brewer's agent, or holder of an out-of-state shipper's permit that exceeds the fair market value of the terminated wholesaler's distribution rights specified under this paragraph.

INSERT 5-6:

d. The wholesaler or a principal of the wholesaler became insolvent or instituted bankruptcy proceedings, dissolved or liquidated the wholesaler's business, or assigned or attempted to assign the assets of the wholesaler's business for the benefit of creditors.

X
X

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4078/3dn/

ARG: *[Signature]*

Date

ATTN: Judi

Absent specific direction for this redraft, I compared the instructions for the “/2” draft with the instructions for the “/3” draft to identify the differences and, based thereon, made changes at the following locations of the “/2” draft:

p. 3, lines 15-16 and 19-20

p. 4, lines 8 and 13, material inserted after line 13, and lines 16-18

p. 5, material inserted after line 6, lines 7-9 and 20-22

p. 6, material inserted after line 3 and lines 4-25

p. 7, lines 1-9

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4078/3dn
ARG:kjf:pg

February 19, 2004

ATTN: Judi

Absent specific direction for this redraft, I compared the instructions for the "/2" draft with the instructions for the "/3" draft to identify the differences and, based thereon, made changes at the following locations of the "/2" draft:

p. 3, lines 15-16 and 19-20

p. 4, lines 8 and 13, material inserted after line 13, and lines 16-18

p. 5, material inserted after line 6, lines 7-9 and 20-22

p. 6, material inserted after line 3 and lines 4-25

p. 7, lines 1-9

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

Gary, Aaron

From: Rhodes-Engels, Judi
Sent: Monday, February 23, 2004 2:17 PM
To: Gary, Aaron
Subject: RE: Beer Distributor Draft

it is on it's way

-----Original Message-----

From: Gary, Aaron
Sent: Monday, February 23, 2004 2:17 PM
To: Rhodes-Engels, Judi
Subject: RE: Beer Distributor Draft

Judi,

I am doing it right now. If you haven't already sent the jacket back, I'll need that back before LRB-4078/4 will go out. Thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

-----Original Message-----

From: Rhodes-Engels, Judi
Sent: Monday, February 23, 2004 12:25 PM
To: Gary, Aaron; Welsh, Mike
Subject: RE: Beer Distributor Draft

Hey Aaron,

I need 4078/3 redrafted the same way.

Thanks!

Judi

-----Original Message-----

From: Gary, Aaron
Sent: Monday, February 23, 2004 11:40 AM
To: Welsh, Mike
Cc: Rhodes-Engels, Judi
Subject: RE: Beer Distributor Draft

I will redraft LRB-4061 accordingly. I will get it into editing this morning but, because of the floor session tomorrow and priority to amendments for bills scheduled for the floor, I cannot guarantee it will be to you today, although it likely will. I will need communication from somebody in Sen. Fitzgerald's office (though it need not be Judi) authorizing the redraft of LRB-4078.

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

-----Original Message-----

From: Welsh, Mike
Sent: Monday, February 23, 2004 11:09 AM
To: Gary, Aaron
Cc: Rhodes-Engels, Judi
Subject: Beer Distributor Draft

Importance: High

Aaron,

Could you please redraft **LRB-4078/3** (for both Senator Fitzgerald and Representative Fitzgerald, as LRB 4078/4 and 4061/3 respectively) with the following changes:

- On page 4, delete lines 14 - 17.
- On page 6, line 8, after "135.02 (3) (a)" add: ,as determined by a court of competent jurisdiction. Any arbitration proceeding under sub. (d) shall be stayed pending such determination.

If you could get this redrafted ASAP, that would be great. We would like to have it jacketed and assigned a bill number by the end of business today.

Thanks,

Mike Welsh
Rep. Fitzgerald's office

TODAY

4078/4

LRB-~~0000~~
ARG:kjf&wlj:rs

R M N R

2003 BILL

Regen

1 AN ACT *to create* 125.33 (10) of the statutes; relating to: compensation of
2 fermented malt beverages wholesalers for termination of distribution rights.

Analysis by the Legislative Reference Bureau

Under current law, a brewer or out-of-state shipper may sell fermented malt beverages (beer) only to a wholesaler. A wholesaler is a person who holds a license to sell beer to retailers and to other wholesalers.

Currently, under the Wisconsin Fair Dealership Law (WFDL), which applies to most types of product distributors, a distributor who operates under a contract or agreement, expressed or implied, with a product supplier (known as the "grantor") for distribution of the grantor's products, and that maintains a sufficiently close continuing financial interest ("community of interest") with the grantor, is considered a "dealer." A dealer may not have its distribution rights terminated, cancelled, not renewed, or substantially changed in terms of competitive circumstances without good cause. The burden of establishing good cause lies with the grantor. "Good cause" means failure by the dealer to comply substantially with essential and reasonable requirements imposed, or sought to be imposed, upon the dealer by the grantor, which requirements are not discriminatory as compared to their application by the grantor to other similarly situated dealers. "Good cause" also means bad faith by the dealer in carrying out the grantor's distribution business. A grantor must also provide a dealer with notice of an intent to terminate, cancel, fail to renew, or substantially change the competitive circumstances of the dealer's distribution rights, and the dealer is entitled to an opportunity to cure any deficiency alleged by the grantor. A grantor that terminates, cancels, fails to renew, or

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substantially changes the dealer's distribution rights without good cause may be held liable, and injunctive relief preventing the grantor's actions may be obtained. Under the WFDL, there is a special category of dealerships for wholesalers of intoxicating liquor and, for this special category, the intoxicating liquor wholesaler does not need to show a "community of interest" with the grantor to be considered a dealer. There is no special category of dealership under the WFDL for beer wholesalers, but beer wholesalers who qualify under the general provisions of the WFDL may obtain relief under the WFDL.

This bill provides beer wholesalers with certain protections of distribution rights in addition to those afforded under the WFDL. With limited exceptions, the bill provides wholesalers with compensable and perpetual rights to the brands of beer they currently distribute within the territory of current distribution. Under the bill, with the exceptions described below, if a brewer or out-of-state shipper terminates an agreement for distribution of a brand of beer within a territory and chooses to have its brand of beer distributed in the same territory by a different wholesaler, the successor wholesaler must compensate the terminated wholesaler for the fair market value of the distribution rights for the territory without time limitation on projected future value. If the terminated wholesaler and successor wholesaler cannot agree on the amount of compensation to be paid to the terminated wholesaler, upon written demand of either party, the dispute must be submitted for binding arbitration, which must generally be commenced within 90 days after the successor wholesaler obtains its distribution rights. Any award of compensation by the arbitrator must be paid within 30 days of the arbitrator's decision, and the parties must each pay an equal share of the costs of arbitration. Under the exceptions, a successor wholesaler is not required to compensate a terminated wholesaler if the brewer or out-of-state shipper terminated the wholesaler's agreement for material fraudulent conduct or substantial misrepresentations, conviction of a felony crime, knowing distribution of products outside the terminated wholesaler's authorized territory, or insolvency or liquidation of the terminated wholesaler's business. The amount of compensation due to the terminated wholesaler from the successor wholesaler must also be reduced by any amount paid to the terminated wholesaler by the brewer or out-of-state shipper for the discontinued brand.

The provisions of the bill do not apply if a court determines that the terminated wholesaler qualifies under the criteria for seeking relief under the WFDL. Any arbitration proceeding for relief under the provisions of the bill must be stayed pending a court determination on this issue.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 125.33 (10) of the statutes is created to read:

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1 125.33 (10) COMPENSATION FOR TERMINATION OF WHOLESALER DISTRIBUTION
2 RIGHTS. (a) In this subsection:

3 1. "Brand" means any word, name, group of letters, symbols, or combination
4 thereof, including the name of the brewer if the brewer's name is also a significant
5 part of the product name, adopted and used by a brewer to identify a specific
6 fermented malt beverage product and to distinguish that product from other
7 fermented malt beverages produced by that brewer or other brewers.

8 2. "Discontinued brand" means, with respect to a terminated wholesaler, any
9 brand of fermented malt beverages for which a brewer, brewer's agent, or holder of
10 an out-of-state shipper's permit has terminated, cancelled, or failed to renew an
11 agreement, whether oral or written, with the wholesaler to supply that brand.

12 3. "Successor wholesaler" means any wholesaler who enters into an agreement,
13 whether oral or written, to obtain a supply of a brand of fermented malt beverages
14 from a brewer, brewer's agent, or holder of an out-of-state shipper's permit after the
15 brewer, brewer's agent, or holder of an out-of-state shipper's permit has terminated,
16 cancelled, or failed to renew an agreement, whether oral or written, with a
17 terminated wholesaler to supply that same brand of fermented malt beverages.

18 4. "Terminated wholesaler" means a wholesaler with whom a brewer, brewer's
19 agent, or holder of an out-of-state shipper's permit has terminated, cancelled, or
20 failed to renew an agreement, whether oral or written, to supply a brand of fermented
21 malt beverages to that wholesaler.

22 (b) Except as provided in par. (c) and subject to pars. (d) and (e), a successor
23 wholesaler shall compensate a terminated wholesaler for the fair market value of the
24 terminated wholesaler's distribution rights to any discontinued brand of fermented
25 malt beverages assumed by the successor wholesaler for the same territory, less any

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1 amount paid to the terminated wholesaler by the brewer, brewer's agent, or holder
2 of an out-of-state shipper's permit for the discontinued brand. If the terminated
3 wholesaler's distribution rights to any discontinued brand of fermented malt
4 beverages are divided among 2 or more successor wholesalers, each successor
5 wholesaler shall compensate the terminated wholesaler for the fair market value of
6 the distribution rights to any discontinued brand of fermented malt beverages
7 assumed by that successor wholesaler for the applicable part of the same territory,
8 less any amount paid to the terminated wholesaler by the brewer, brewer's agent, or
9 holder of an out-of-state shipper's permit for the discontinued brand. A terminated
10 wholesaler may not receive under this paragraph total compensation from the
11 successor wholesaler and brewer, brewer's agent, or holder of an out-of-state
12 shipper's permit that exceeds the fair market value of the terminated wholesaler's
13 distribution rights specified under this paragraph.

14 (c) A successor wholesaler is not required to compensate a terminated
15 wholesaler under par. (b) if the terminated wholesaler's agreement was terminated,
16 cancelled, or not renewed for any of the following reasons:

17 1. The wholesaler or a principal of the wholesaler engaged in material
18 fraudulent conduct or made substantial misrepresentations in its dealings with the
19 brewer, brewer's agent, or holder of an out-of-state shipper's permit or with others
20 regarding any brand of the brewer, brewer's agent, or holder of an out-of-state
21 shipper's permit.

22 2. The wholesaler or a principal of the wholesaler was convicted of, or pleaded
23 no contest to, a felony crime.

24 3. The wholesaler or a principal of the wholesaler knowingly distributed any
25 brand of the brewer, brewer's agent, or holder of an out-of-state shipper's permit

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1 outside the territory authorized by the brewer, brewer's agent, or holder of an
2 out-of-state shipper's permit for distribution of the brand.

3 4. The wholesaler or a principal of the wholesaler became insolvent or
4 instituted bankruptcy proceedings, dissolved or liquidated the wholesaler's
5 business, or assigned or attempted to assign the assets of the wholesaler's business
6 for the benefit of creditors.

7 (d) If a terminated wholesaler and a successor wholesaler agree to the fair
8 market value of the terminated wholesaler's distribution rights to any discontinued
9 brand of fermented malt beverages assumed by the successor wholesaler for the
10 same territory, the successor wholesaler shall pay the agreed upon sum to the
11 terminated wholesaler within 30 days of the date on which the parties reach the
12 agreement. If the parties cannot agree on the compensation due to the terminated
13 wholesaler, upon written demand of either party, the parties shall submit their
14 dispute for binding arbitration, subject to ch. 788, under the commercial arbitration
15 rules of the American Arbitration Association if possible or, if not possible, by a
16 nationally recognized arbitration association. The arbitration shall be conducted on
17 an expedited basis to the extent an expedited proceeding is available. The
18 arbitration shall commence within 90 days after the successor wholesaler obtains
19 rights to receive a supply of a brand of fermented malt beverages, that is a
20 discontinued brand of fermented malt beverages, of the terminated wholesaler,
21 unless this time period is extended by mutual agreement of the parties or by the
22 arbitrator. If the arbitrator awards compensation to the terminated wholesaler
23 under this paragraph, the successor wholesaler shall pay the awarded compensation
24 to the terminated wholesaler within 30 days of the date of the arbitrator's decision.

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1 The terminated wholesaler and the successor wholesaler shall each pay an equal
2 share of the costs of arbitration.

3 (e) This subsection does not apply if the terminated wholesaler is a dealer, as
4 defined in s. 135.02 (2), whose business relationship as to any discontinued brand
5 constitutes a dealership, as defined in s. 135.02 (3) (a), as determined by a court of
6 competent jurisdiction. Any arbitration proceeding under par. (d) shall be stayed
7 pending this determination.

8 **SECTION 2. Initial applicability.**

9 (1) This act first applies to agreements terminated, cancelled, or not renewed
10 on the effective date of this subsection.

11 (END)