



**WISCONSIN LEGISLATIVE COUNCIL
ACT MEMO**

2003 Wisconsin Act 303 [2003 Senate Bill 489]	Termination of Distribution Rights of Beer Wholesalers
2003 Acts: www.legis.state.wi.us/2003/data/acts/	Act Memos: www.legis.state.wi.us/lc/act_memo/act_memo.htm

2003 Wisconsin Act 303 relates to compensation of fermented malt beverages (e.g., beer) wholesalers for termination of distribution rights. The Act affects the relationship between terminated wholesalers (wholesalers with whom a brewer has terminated, canceled, or failed to renew an agreement to supply a brand to that wholesaler) and successor wholesalers (wholesalers who enter into an agreement to obtain a supply of a brand after the brewer has terminated, canceled, or failed to renew an agreement with a terminated wholesaler).

Under the Act, a successor wholesaler is required to compensate a terminated wholesaler for the fair market value of the distribution rights to any brand of fermented malt beverages assumed by the successor wholesaler for the same territory, less any amount paid by the brewer to the terminated wholesaler. If the terminated wholesaler's distribution rights are divided among two or more successor wholesalers, each successor wholesaler must compensate the terminated wholesaler for the fair market value of the distribution rights assumed by the successor wholesaler for the applicable part of the same territory, less any amount paid by the brewer to the terminated wholesaler.

A successor wholesaler is not required to provide compensation if the terminated wholesaler's agreement was terminated, canceled, or not renewed because the wholesaler or a principal of the wholesaler did any of the following: (1) engaged in material fraudulent conduct or made substantial misrepresentations in its dealings with the brewer or with others regarding any brand of the brewer; (2) was convicted of, or pleaded no contest to, a felony; (3) knowingly distributed any brand of the brewer outside the territory authorized for distribution of the brand; or (4) 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. (In this paragraph, the term "brewer" includes brewers, brewers' agents, and out-of-state shippers.)

The Act states that if a terminated wholesaler and a successor wholesaler agree to the fair market value of the distribution rights, the successor wholesaler must pay the agreed upon sum within 30 days.

This memo provides a brief description of the Act. For more detailed information,
consult the text of the law and related legislative documents.

If the parties cannot agree on the compensation due, either party may require binding arbitration under specified arbitration rules. The arbitration must be conducted on an expedited basis to the extent that this is available. The terminated wholesaler and the successor wholesaler are required to each pay an equal share of the cost of arbitration.

The above provisions of the Act do not apply if the terminated wholesaler is a dealer, as defined in the Fair Dealership Law, whose business relationship to any discontinued brand constitutes a dealership, as determined by a court. The arbitration proceedings described above are to be stayed pending this determination.

Effective Date: The Act takes effect on May 5, 2004.

Prepared by: Richard Sweet, Senior Staff Attorney

May 10, 2004

RNS:ksm:rv

Vote Record
Committee on Homeland Security, Veterans and Military Affairs and Government Reform

Date: 3/3/04

Moved by: Breske

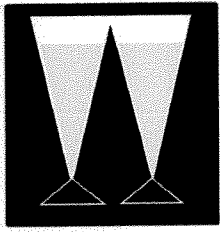
Seconded by: W. rch

AB _____ SB 489 Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt _____
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt _____
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

- Be recommended for:
- Passage Adoption Confirmation Concurrence Indefinite Postponement
 - Introduction Rejection Tabling Nonconcurrency

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator Ronald Brown, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator David Zien	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Scott Fitzgerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Robert Wirch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Roger Breske	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>5</u>	<u>0</u>	<u>0</u>	<u>0</u>



Wisconsin Beer Distributors Association

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Fax: (608)255-6466
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Brian Morello

Beloit Beverage Co.
Chair, Board of Directors

Eric Jensen

Executive Director

2004 Member Companies

Arcadia Beverage Company
Baer's Beverage
Beloit Beverage Co. - Beloit
Beloit Beverage Co. - Milw.
Bill's Distributing, Ltd.
C & H Inc. of Reedsburg
Central Beer Distributors Inc.
Dean Distributing
Flanigan Dist. of Door County
Four Seasons Beer Distributing
G.B. Sales Corp. - Barron
General Beer Distributors
H & M Distributing Company
Hellman Distributors - Marsh.
Hellman Distributors - Sparta
Larry's Distributing Company
M & L Brands, Inc.
Miller Beer of the Northwoods
Miller Brands-Milwaukee, LLC
Northwest Beverages
Oneida Sales & Service
Park Ridge Distributing
Pehler Brothers
Prairie Beer Dist. Company
Premium Brands
River City Distributing
S & S Distributing - Marshfield
S & S Distributing - Sparta
Ott Schweitzer Distributorship
Stanley's Beer Depot
Superior Beverages, LP
Triangle Distributing Company
Tri County Distributors, LLC
Western Distributing Company
Wisconsin Distributors, LP
Wisconsin Wetgoods Co.
W.O.W. Distributing Co. Inc.

TO: Members, Wisconsin State Senate
FROM: Eric Jensen, Executive Director
DATE: March 3, 2004
RE: Support for Senate Bill 489

MAR 04 2004

Please vote in favor of Senate Bill 489.

On average, Wisconsin's Beer Distributors are small, family-owned businesses employing fewer than 40 people in good paying jobs. On the whole they employ more than 2000 Wisconsinites, are responsible for millions in tax revenue each year, and actively support an endless variety of community events and programs. SB 489 will provide these family businesses, and those they employ some security for investing in their businesses.

SB 489 will provide limited and fair protection for the investments Beer Distributors make on behalf of the brewers they serve, in situations where the Wisconsin Fair Dealership Law does not apply.

As you know, the real value of a Beer Distributor's company is the distribution rights the company holds that allow it to provide beer to retailers - without them, the company is worthless.

- The Fair Dealership Law (FDL) protects Beer Distributors who carry the large national brands. Under FDL, if a brewer pulls its brand rights away from a Distributor, the Distributor can get an injunction to stop the brewer and a chance to "cure" the problem.
- But, *if a brand of beer the Distributor provides does not reach roughly 15% of the Distributor's business, FDL does not apply, and there is no protection whatsoever for the Distributor's investment.* Nearly half of Wisconsin's Beer Distributors rely on these smaller brands to survive.

Under current law, a brewer whose brands are not covered by FDL can pull its distribution rights away from a Distributor - for any reason, without warning and without compensation.

SB 489:

- Applies ONLY when FDL does not;
- Provides that where a brewer pulls its distribution rights, the "new" Distributor compensates the "old" Distributor up to "fair market value" for those rights (there is no "double-dipping," or getting more than the brand is worth);
- If the Distributors can't agree on what "fair market value" is, they pay for binding arbitration to decide, and it's done in 90 days.

There is no litigation - if any dispute resolution is necessary it is fast and inexpensive. And, while SB 489 allows a brewer to negotiate compensation with the "old" Distributor if it wishes, it requires NO COST TO THE BREWER.



TO: Senator Ron Brown, Chair
Members, Senate Committee on Homeland Security, Veterans and
Military Affairs and Government Reform

FROM: Jim Hellman, Hellman Distributors
Chair, Board of Directors
Wisconsin Beer Distributors Association

DATE: March 3, 2004

RE: Support for SB 489

Thank you for the opportunity to provide this testimony on SB 489, referred to as "Compensation for Loss of Brand Rights."

The Wisconsin Fair Dealership Law (FDL) is generally designed to protect those who are granted rights to sell or distribute the product of another - franchise rights. But, when it comes to beer distributors, FDL coverage is quite limited. SB 489 is specifically designed to provide some protection for beer distributors' investments and businesses in cases where FDL does not apply, and nothing more.

In our statutorily defined, highly-regulated industry, beer distributors are granted "distribution rights" to sell a brewer's beer in a given territory. Nearly all carry brands from more than one brewer, and distributors invest heavily to refrigerate, warehouse, market, sell and deliver their perishable product. But the only real value of the company is its "distribution rights" - without them, the company is worthless.

FDL protects distributors with rights to sell the largest volume brands. Generally, when it applies, a brewer must show good cause to pull its distribution rights from a distributor, give the distributor opportunity to cure any problems, and/or pay the distributor damages incurred by pulling those rights without cause. This protects the distributor's investment, and provides the certainty necessary to encourage investment in this capital-heavy business, creation of jobs and generation of tax revenues.

BUT... FDL does not apply to the vast majority of beer brands. Generally, if a brewer's beer is not more than 15% of a beer distributor's total business, the distribution rights are not protected by FDL. Nearly all Wisconsin beer distributors sell some brands that fall below this threshold, and *nearly half* (called "all others") rely on smaller-volume brands to survive - there is no protection for them.

Specifically, what does SB 489 do?

- SB 489 makes no changes to the FDL (Ch. 135);
- SB 489 applies only when FDL does not apply (it is not an "alternative to" FDL);

- Under SB 489, there is zero cost to any brewer. When a brewer wishes to pull its distribution rights from one beer distributor and give them to another, the “new” distributor must pay the “old” distributor “fair market value” for those rights. If the two distributors cannot agree on “fair market value” they pay an arbitrator to decide. That’s it - there is no expensive or time-consuming litigation, and a distributor can get nothing more than “fair market value,” so there is no “double-dipping.”

SB 489 provides for a beer distributor-to-beer distributor compensation at “fair market value,” and that “fair market value” will automatically reflect the brand’s sales performance and the distributor’s history and investment with the brand.

Without SB 489, brewers can pull their brands from distributors for no reason, with little or no notice, and without compensation. Loss of a brand does not mean reduction of overhead expenses, it means only loss of revenue. It is significant for any beer distributor, and quite possibly crippling. SB 489 provides simple and appropriate security for the distributor’s investment on behalf of that brewer. Like any business, security breeds investment, growth, jobs and tax revenue.

Without SB 489 an “all other” distributor’s company is under someone else’s control. Most are family-owned small businesses, built and owned by their families for generations. An “all other” wishing to pass the business on to children, or sell it to provide a nest-egg for grandchildren is at the mercy of her/his brewers - they can pull or threaten to pull and render the business worthless.

SB 489 was part of the industry-negotiated “tied house compromise” in the 2001-03 Budget Bill. While the balance of the package passed, SB 489 was removed shortly before passage along with other items supported by beer distributors. We believe the time is now to complete passage of that negotiated compromise.

MEMORANDUM

To: Senator Ron Brown

From: *Mike*
Michael R. Vaughan

Re: SB 489, Compensating beer wholesalers
for termination of distribution rights

Date: 1 March 2004

Your committee held a hearing on a predecessor draft to SB 489 on February 18. At that hearing, I set forth the background on this issue, how an agreed version on this subject had been negotiated in 2001, how it had been deleted at that time in the Senate from a broader package, and how the wholesalers suddenly proposed a different version on January 26 of this year, claiming it to be the 2001 agreement.

As I testified on February 18, the draft heard then and this bill are not what the parties agreed to in 2001. We have continued to discuss the issues involved with the wholesalers. For a brief period at the time of your hearing, we thought there was an agreement to pursue the 2001 agreement, but the wholesalers changed their mind and decided to pursue this bill unilaterally.

We have "process" objections to the bill. Honoring agreements is important, both in the business world and in the legislative arena. We are willing to honor our 2001 commitment; we are sorry the wholesalers are not.

More importantly, we have strong substantive objections to the current bill. This bill removes a prohibition contained in the 2001 agreement against double payments to wholesalers. Such a prohibition was long debated before the 2001 agreement was reached. Agreement on the final language of the prohibition was central to the parties finally being able to reach a meeting of the minds. Now the wholesalers have asked the Legislature to give them what they want, without regard to the original agreement.

On behalf of Anheuser-Busch, I ask you to keep this bill in committee, and instruct the parties to continue to try to reach agreement. The Wisconsin Merchants Federation, one of whose members makes Guinness Beer, joins me in this request. I am authorized to say that the New Glarus Brewing Company makes the same request.

MRV:bg
230070
Memo – SB 489

Gilbert, Melissa

From: Jahr, Dave
Sent: Wednesday, March 03, 2004 4:43 PM
To: Gilbert, Melissa
Subject: FW: Opposition to AB 904 and SB 489

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

From: Doug Johnson [mailto:dqj@supranet.net]
Sent: Wednesday, March 03, 2004 2:16 PM
To: Dave Jahr
Subject: Opposition to AB 904 and SB 489

Dave: This follows our discussion of this legislation that is this session's mini-version of the liquor wars from two sessions ago... Sen. Jauch will remember that! Any help you can lend to this battle will be appreciated! Johnson

MEMORANDUM

TO: State Senator Mary Panzer, State Senator Scott Fitzgerald
State Rep. John Gard, State Rep. Jeff Fitzgerald, State Rep. Steven Foti

FROM: Chris Tackett, President & CEO
Doug Johnson, Sr. VP & General Counsel

DATE: February 27, 2004

RE: Opposition to AB 904 & SB 489

The Wisconsin Merchants Federation respectfully opposes these bills on the basis of process and policy. Traditionally, to avoid the "liquor and beer" wars all interested parties have worked to reach a compromise not unlike the process used for unemployment compensation and worker's compensation. The most recent example for the beer industry was with the Tied House changes that were made in the 2001 legislative session and ultimately enacted into law.

AB 904 and SB 489 break that tradition and come in at the 11th hour in this legislative session. They address subject matter that was addressed as part of the compromises leading to the Tied House changes in 2001. The subject matter of these bills was include in the compromise recommended to the Legislature in 2001. This subject failed to pass the senate despite the agreement within the industry, BUT these two bills now propose to do something different than what was agreed to then among the parties and subsequently removed in the Senate.

03/04/2004

Under the 2001 agreement "double dipping" was not permitted. Under these bills it is. A wholesaler under these bills will be allowed to collect under its contract with a brewery when the distribution rights to a product line are removed AND will be able to file suit against the successor wholesaler to be compensated again for additional money.

That's just not fair. It was never intended in 2001. In fact, this very subject of double dipping was a contentious item that took a long time to be ironed out in lengthy negotiations on language. Now these bills ignore that negotiated agreement and start the debate anew. These bills unfairly advantage beer wholesalers by ignoring that 2001 agreement. The result is that these bills will add litigation and other costs to any pertinent disagreement between a wholesaler and brewer. This works to the disadvantage of suppliers, manufacturers and consumers alike--and is precisely why the parties worked out a negotiated solution in 2001. Now these bills ignore that agreement and propose a one-sided "solution" to what had been agreed to.

Again and respectfully our members disagree with the non-solution proposed by these bills and request your opposition to them at this late date in the session. Tell the parties to go back to the bargaining table until they have an agreed solution.

Thank you.



TO: Senator Ron Brown, Chair
Members, Senate Committee on Homeland Security, Veterans and
Military Affairs and Government Reform

FROM: Jim Hellman, Hellman Distributors
Chair, Board of Directors
Wisconsin Beer Distributors Association

DATE: February 18, 2004

RE: Support for Compensation for Loss of Brands

Thank you for the opportunity to provide this testimony in support of "Compensation for Loss of Brands" (CLB).

The Wisconsin Fair Dealership Law (FDL) is generally designed to protect those who are granted rights to sell or distribute the product of another - franchise rights. But, when it comes to beer distributors, FDL coverage is quite limited. CLB is specifically designed to provide some protection for beer distributors' investments and businesses in cases where FDL does not apply, and nothing more.

In our statutorily defined, highly-regulated industry, beer distributors are granted "distribution rights" to sell a brewer's beer in a given territory. Nearly all carry brands from more than one brewer, and distributors invest heavily to refrigerate, warehouse, market, sell and deliver their perishable product. But the only real value of the company is its "distribution rights" - without them, the company is worthless.

FDL protects distributors with rights to sell the largest volume brands. Generally, when it applies, a brewer must show good cause to pull its distribution rights from a distributor, give the distributor opportunity to cure any problems, and/or pay the distributor damages incurred by pulling those rights without cause. This protects the distributor's investment, and provides the certainty necessary to encourage investment in this capital-heavy business, creation of jobs and generation of tax revenues.

BUT... FDL does not apply to the vast majority of beer brands. Generally, if a brewer's beer is not more than 15% of a beer distributor's total business, the distribution rights are not protected by FDL. Nearly all Wisconsin beer distributors sell some brands that fall below this threshold, and *nearly half* (called "all others") rely completely on smaller-volume brands - there is no protection for them.

Specifically, what does CLB do?

- CLB makes no changes to the FDL (Ch. 135);

- CLB applies only to the brewer-beer distributor relationship, and only when FDL does not apply (it is not an “alternative to” FDL);
- Under CLB, there is zero cost to any brewer. When a brewer wishes to pull its distribution rights from one beer distributor and give them to another, the “new” distributor must pay the “old” distributor “fair market value” for those rights. If the two distributors cannot agree on “fair market value” they pay an arbitrator to decide. That’s it.

CLB provides for a beer distributor-to-beer distributor compensation at “fair market value,” and that “fair market value” will automatically reflect the brand’s sales performance and the distributor’s history and investment with the brand.

Without CLB, brewers can pull their brands from distributors with little or no notice, and without compensation. Loss of a brand does not mean reduction of overhead expenses, it means only loss of revenue. It is significant for any beer distributor, and quite possibly crippling. CLB provides simple and appropriate security for the distributor’s investment on behalf of that brewer. Like any business, security breeds investment, growth, jobs and tax revenue.

Without CLB an “all other” distributor’s company is under someone else’s control. Most are family-owned small businesses, built and owned by their families for generations. An “all other” wishing to pass the business on to children, or sell it to provide a nest-egg for grandchildren is at the mercy of her/his brewers - they can pull or threaten to pull and render the business worthless.

CLB was part of the industry-negotiated “tied house compromise” in the 2001-03 Budget Bill. While the balance of the package passed, CLB was removed shortly before passage along with other items supported by beer distributors. We believe the time is now to complete passage of that negotiated compromise.

What is "Compensation for Loss of Brand"?

Compensation for Loss of Brand ("CLB") protects the value of beer distributors' businesses and gives them control over their family companies - *at no cost to anyone except beer distributors.*

History: CLB was part of the industry-negotiated "tied house compromise" supported by the Tavern League, the Wisconsin Restaurant Association, Miller Brewing and Anheuser-Busch in the 2001-03 Budget Bill. While the balance of the package passed, CLB was removed prior to passage along with other items supported by beer distributors.

Background: In our statutorily defined, highly-regulated industry, beer distributors are granted "distribution rights" to sell a brewer's beer in a given territory. Nearly all carry brands from more than one brewer, and distributors invest heavily to refrigerate, warehouse, market, sell and deliver their perishable product. But the only real value of the company is its "distribution rights" – without them, the company is worthless.

Wisconsin's Fair Dealership Law (FDL) protects distributors with rights to sell the largest volume brands. Generally, when FDL applies, a brewer must show good cause to pull its distribution rights from a distributor, give the distributor opportunity to cure any problems, and/or pay the distributor "fair market value" for those distribution rights. This protects the distributor's investment, and provides the certainty necessary to encourage investment in this capital-heavy business, creation of jobs and generation of taxes.

BUT... FDL does not apply to the vast majority of brands. If a brewer's beer is not more than 15% of a beer distributor's total business, the distribution rights are not protected by FDL. Nearly all Wisconsin beer distributors sell some brands that fall below this threshold, and more than half (called "all others") rely completely on smaller-volume brands – and there is no protection for them.

Details:

- CLB makes no changes to the FDL (Ch. 135);
- CLB applies only to the brewer-beer distributor relationship, and only when FDL does not (it is not an "alternative to" FDL);
- Under CLB, there is zero cost to any brewer. When a brewer wishes to pull its distribution rights from one beer distributor and give them to another, the "new" distributor must pay the "old" distributor "fair market value" for those rights. If the two distributors cannot agree on "fair market value" they pay an arbitrator to decide. That's it.

Without CLB, brewers can pull their brands from distributors with little warning, and without compensation. CLB provides appropriate security for the distributor's investment on behalf of that brewer. Like any business, security breeds investment, growth, jobs and taxes.

Worse, without CLB an "all other" distributor's company is under someone else's control. Most are family-owned small businesses, built and owned by their families for generations. An "all other" wishing to pass the business on to children, or sell it to provide a nestegg for grandchildren is at the mercy of her/his brewers - they can pull or threaten to pull and render the business worthless.

Passing CLB is the fair thing to do - for many reasons.

CAPITAL BREWERY COMPANY, INC.

Carl Nolen
President

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LRB 407812 - Compensation for Loss of Brand

Carl Nolen - Capital Brewery (Middleton)

Concern → formerly wholesaler in district
arbitration issue

→ who decides what market value is?

→ legal costs could scare off potential distributors

believes compensation usually occurs now
- what is spurring this bit?

believes budget language was more palatable to brewers

Point buying situation.

Gilbert, Melissa

From: Rep.Fitzgerald
Sent: Monday, February 23, 2004 2:56 PM
To: *Legislative Assembly Republicans; *Legislative Assembly Democrats; *Legislative Senate Republicans; *Legislative Senate Democrats
Subject: EXTREMELY SHORT DEADLINE/Co-sponsorship/LRB 4061 & 4078/Loss of Brand Compensation

*****SHORT DEADLINE*****

Co-Sponsorship Memorandum

To: All Legislators
From: Representative Fitzgerald & Senator Fitzgerald
Date: February 23, 2004
RE: LRB-4061/3 & 4078/4 - Compensation of fermented malt beverages wholesalers for termination of distribution rights.

Chapter 135 of state statutes, better known as Wisconsin's Fair Dealership Law or FDL, is designed to protect franchise rights between product manufacturers and product wholesalers and retailers. Among other things, Chapter 135 protects the rights of beer distributors to sell large volume brands by prohibiting breweries from pulling distribution rights from a particular distributor, unless the brewery shows good cause or pays the distributor fair market value for the franchise rights.

However, FDL generally does not apply to brands of beer that do not make up 15% of a beer distributor's total business. So while this is rarely-if ever-a problem for large volume beer brands, such as Miller or Budweiser, FDL generally does not cover many popular brands, such as Corona or Sam Adams.

LRB's 4061 and 4078 would provide some protection for beer distributors in situations where FDL does not apply and no protection currently exists. It in no way makes any changes to Wisconsin's Fair Dealership Law and is definitely not an alternative to FDL.

This legislation simply provides that if a brewer pulls distribution rights from a beer distributor-without proof of fraud, criminal conduct or misrepresentation on the part of the beer distributor-the "successor" or "new" distributor would be required to pay the "terminated" distributor "fair market value" for the brand rights. The bill would not cost brewers a dime.

If you are interested in co-sponsoring LRB-4061 and it's companion bill (LRB-4078), please contact Representative Fitzgerald's office at 266-2540 or Senator Fitzgerald's office at 266-5660 by Tuesday, February 24 at 10:00 A.M.



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