

2003 SENATE BILL 489

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

Analysis by the Legislative Reference Bureau

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.

SENATE BILL 489**SECTION 1**

1 2. “Discontinued brand” means, with respect to a terminated wholesaler, any
2 brand of fermented malt beverages for which a brewer, brewer’s agent, or holder of
3 an out-of-state shipper’s permit has terminated, cancelled, or failed to renew an
4 agreement, whether oral or written, with the wholesaler to supply that brand.

5 3. “Successor wholesaler” means any wholesaler who enters into an agreement,
6 whether oral or written, to obtain a supply of a brand of fermented malt beverages
7 from a brewer, brewer’s agent, or holder of an out-of-state shipper’s permit after the
8 brewer, brewer’s agent, or holder of an out-of-state shipper’s permit has terminated,
9 cancelled, or failed to renew an agreement, whether oral or written, with a
10 terminated wholesaler to supply that same brand of fermented malt beverages.

11 4. “Terminated wholesaler” means a wholesaler with whom a brewer, brewer’s
12 agent, or holder of an out-of-state shipper’s permit has terminated, cancelled, or
13 failed to renew an agreement, whether oral or written, to supply a brand of fermented
14 malt beverages to that wholesaler.

15 (b) Except as provided in par. (c) and subject to pars. (d) and (e), a successor
16 wholesaler shall compensate a terminated wholesaler for the fair market value of the
17 terminated wholesaler’s distribution rights to any discontinued brand of fermented
18 malt beverages assumed by the successor wholesaler for the same territory, less any
19 amount paid to the terminated wholesaler by the brewer, brewer’s agent, or holder
20 of an out-of-state shipper’s permit for the discontinued brand. If the terminated
21 wholesaler’s distribution rights to any discontinued brand of fermented malt
22 beverages are divided among 2 or more successor wholesalers, each successor
23 wholesaler shall compensate the terminated wholesaler for the fair market value of
24 the distribution rights to any discontinued brand of fermented malt beverages
25 assumed by that successor wholesaler for the applicable part of the same territory,

SENATE BILL 489

1 less any amount paid to the terminated wholesaler by the brewer, brewer's agent, or
2 holder of an out-of-state shipper's permit for the discontinued brand. A terminated
3 wholesaler may not receive under this paragraph total compensation from the
4 successor wholesaler and brewer, brewer's agent, or holder of an out-of-state
5 shipper's permit that exceeds the fair market value of the terminated wholesaler's
6 distribution rights specified under this paragraph.

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

10 1. The wholesaler or a principal of the wholesaler engaged in material
11 fraudulent conduct or made substantial misrepresentations in its dealings with the
12 brewer, brewer's agent, or holder of an out-of-state shipper's permit or with others
13 regarding any brand of the brewer, brewer's agent, or holder of an out-of-state
14 shipper's permit.

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

17 3. The wholesaler or a principal of the wholesaler knowingly distributed any
18 brand of the brewer, brewer's agent, or holder of an out-of-state shipper's permit
19 outside the territory authorized by the brewer, brewer's agent, or holder of an
20 out-of-state shipper's permit for distribution of the brand.

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

SENATE BILL 489**SECTION 1**

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

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

