

2003 Senate Bill 489

Date of enactment: **April 20, 2004**

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2003 WISCONSIN ACT 303

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

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

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

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

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 of fermented malt beverages for which a brewer, brewer's agent, or holder of an out-of-state shipper's permit has terminated, cancelled, or failed to renew an agreement, whether oral or written, with the wholesaler to supply that brand.

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

whether oral or written, with a terminated wholesaler to supply that same brand of fermented malt beverages.

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

(b) Except as provided in par. (c) and subject to pars. (d) and (e), a successor wholesaler shall compensate a terminated wholesaler for the fair market value of the terminated wholesaler's distribution rights to any discontinued brand of fermented malt beverages assumed by the successor wholesaler for the same territory, 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. If the terminated wholesaler's distribution rights to any discontinued brand of fermented malt beverages are divided among 2 or more successor wholesalers, each successor wholesaler shall compensate the terminated wholesaler for the fair market value of the distribution rights to any discontinued brand of fermented malt beverages assumed by that successor wholesaler for the applicable part of the same territory, 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. A terminated wholesaler may not receive under this paragraph total compensation from the successor wholesaler

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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.

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

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

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

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

4. 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.

(d) If a terminated wholesaler and a successor wholesaler agree to the fair market value of the terminated wholesaler's distribution rights to any discontinued brand of fermented malt beverages assumed by the successor wholesaler for the same territory, the successor

wholesaler shall pay the agreed upon sum to the terminated wholesaler within 30 days of the date on which the parties reach the agreement. If the parties cannot agree on the compensation due to the terminated wholesaler, upon written demand of either party, the parties shall submit their dispute for binding arbitration, subject to ch. 788, under the commercial arbitration rules of the American Arbitration Association if possible or, if not possible, by a nationally recognized arbitration association. The arbitration shall be conducted on an expedited basis to the extent an expedited proceeding is available. 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 fermented malt beverages, of the terminated wholesaler, unless this time period is extended by mutual agreement of the parties or by the arbitrator. If the arbitrator awards compensation to the terminated wholesaler under this paragraph, the successor wholesaler shall pay the awarded compensation to the terminated wholesaler within 30 days of the date of the arbitrator's decision. The terminated wholesaler and the successor wholesaler shall each pay an equal share of the costs of arbitration.

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

SECTION 2. Initial applicability.

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