

*Reprinted*

FILED FEB 23 1995

SENATE FILE 207  
BY COMMITTEE ON STATE GOVERNMENT

(SUCCESSOR TO SSB 174)

Passed Senate, Date (p.574) 3/9/95 Passed House, Date (p.1380) 4-10-95  
Vote: Ayes 47 Nays 3 Vote: Ayes 82 Nays 16  
Approved April 26, 1995

**A BILL FOR**

1 An Act relating to the distribution and sale of beer, providing  
2 for the regulation of brewer and wholesaler agreements,  
3 prohibiting certain conduct, providing for the transfer of  
4 business assets, providing judicial remedies, specifying  
5 applicability, and providing for other properly related  
6 matters.

----- BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

**SENATE FILE 207**

**S-3102**

- 1 Amend Senate File 207 as follows:
- 2 1. Page 3, line 21, by adding after the word
- 3 "trade" the following: "and defined and interpreted
- 4 under section 554.2103".
- 5 2. Page 3, by inserting after line 21 the
- 6 following:
- 7 "\_\_\_\_. "Manager" means an individual named or
- 8 designated by agreement between the brewer and
- 9 wholesaler, who is principally responsible for the
- 10 daily management of the wholesaler."
- 11 3. Page 11, line 17, by inserting after the word
- 12 "cancellation," the following: "nonrenewal,".
- 13 4. Page 11, by striking lines 21 and 22 and
- 14 inserting the following: "business, award equitable
- 15 relief, actual damages, court costs, and attorney's
- 16 fees."
- 17 5. By renumbering as necessary.

By MICHAEL E. GRONSTAL

S-3102 FILED MARCH 8, 1995

3/9/95 (p.574) **ADOPTED**

1 Section 1. NEW SECTION. 123A.1 PURPOSES AND SCOPE.

2 This chapter is enacted pursuant to the authority of the  
3 state under the provisions of the twenty-first amendment to  
4 the Constitution of the United States to promote the public's  
5 interest in fair, efficient, and competitive distribution of  
6 beer products through regulation and encouragement of brewer  
7 and wholesaler vendors to conduct their business relations  
8 toward these ends by:

9 1. Assuring that the beer wholesaler is free to manage its  
10 business enterprise.

11 2. Assuring the brewer and the public of service from  
12 wholesalers who will devote reasonable efforts and resources  
13 to distribution and sales of all of the brewer's products  
14 which the wholesaler has been granted the right to sell and  
15 distribute and maintain satisfactory sales levels.

16 3. Promoting and maintaining a sound, stable, and viable  
17 three-tier system of distribution of beer to the public.

18 Sec. 2. NEW SECTION. 123A.2 DEFINITIONS.

19 As used in this chapter, unless the context otherwise  
20 requires:

21 1. "Affected party" means a wholesaler, brewer, master  
22 distributor, successor brewer, or any person that is a party  
23 to an agreement.

24 2. "Agreement" means a contract or arrangement whether  
25 expressed or implied, oral or written, for a definite or  
26 indefinite period between a brewer and a wholesaler pursuant  
27 to which a wholesaler has been granted the right to purchase,  
28 resell, and distribute one or more brands of beer offered by a  
29 brewer, or a contract or arrangement in which a brewer grants  
30 to a wholesaler a license to use a trade name, trademark,  
31 service mark, or related characteristic and in which there is  
32 a community of interest in the marketing of the products of  
33 the brewer. An agreement exists when one or more of the  
34 following occur:

35 a. A brewer has shipped beer to a wholesaler or accepted

1 an order for beer from a wholesaler.

2 b. A brewer purchases the right to manufacture a beer  
3 product, the right to use the trade name for the product, or  
4 the right to distribute a product from another brewer with  
5 whom the wholesaler has an agreement.

6 3. "Beer" means any liquid capable of being used for  
7 beverage purposes made by the fermentation of an infusion in  
8 potable water of barley, malt, and hops with or without  
9 unmalted grains or decorticated and degerminated grains, or  
10 made by the fermentation of, or by distillation of the  
11 fermented products of fruit, fruit extracts, or other  
12 agricultural products, containing more than one-half of one  
13 percent of alcohol by volume but not more than five percent of  
14 alcohol by weight but not including mixed drinks or cocktails  
15 mixed on the premises.

16 4. "Brand" means a word, name, group of letters, symbol,  
17 or a combination of words, names, letters, or symbols adopted  
18 and used by a brewer to identify a specific beer product, and  
19 to distinguish that beer product from other beer products  
20 brewed or marketed by that brewery or other breweries.

21 5. "Brand extension" means a brand which incorporates all  
22 or a substantial part of the unique features of a preexisting  
23 brand of the same brewery and which relies to a significant  
24 extent on the goodwill associated with the preexisting brand.  
25 However, a general corporate logo or symbol or an advertising  
26 message, whether appearing on the product packaging or  
27 elsewhere, is not a brand, brand extension, or part of a brand  
28 or brand extension.

29 6. "Brewer" means a person who is engaged in the  
30 manufacture of beer for the purpose of sale, barter, exchange,  
31 or transportation, a master distributor, or a fermenter,  
32 processor, bottler, packager, or importer of beer, or a  
33 successor brewer.

34 7. "Designated member" means a deceased wholesaler's  
35 spouse, child, grandchild, parent, brother, or sister, who is

1 entitled to inherit the deceased wholesaler's ownership  
2 interest under the terms of the deceased wholesaler's will,  
3 other testamentary device, or the laws of intestate  
4 succession. With respect to an incapacitated individual  
5 having an ownership interest in a wholesaler, "designated  
6 member" also means a person appointed by the court as the  
7 conservator of the individual's property. "Designated member"  
8 also includes the appointed and qualified personal  
9 representative and the testamentary trustee of a deceased  
10 wholesaler.

11 8. "Good cause" exists if the wholesaler or affected party  
12 has failed to comply with reasonable requirements which are  
13 imposed upon the wholesaler or affected party through an  
14 agreement, which do not discriminate either by their terms or  
15 in the methods of their enforcement as compared with  
16 requirements imposed on other similarly situated wholesalers  
17 by the brewer, and which are not in violation of any law or  
18 administrative rule.

19 9. "Good faith" means honesty in fact and the observance  
20 of reasonable commercial standards of fair dealing in the  
21 trade.

22 10. "Master distributor" means a wholesaler who acts in  
23 the role of or in a similar capacity as a brewer or outside  
24 seller of one or more brands of beer to other wholesalers on a  
25 regular basis in the normal course of business.

26 11. "Reasonable standards and qualifications" means those  
27 criteria applied by the brewer to similarly situated  
28 wholesalers during a period of twenty-four months before a  
29 proposed change in a successor manager of the wholesaler's  
30 business.

31 12. "Similarly situated wholesalers" means wholesalers of  
32 a brewer that are of a generally comparable size, and operate  
33 in markets with similar demographic characteristics, including  
34 population size, density, distribution, and vital statistics,  
35 and reasonably similar economic and geographic conditions.

1 13. "Successor brewer" means a person who succeeds to the  
2 role of a brewer or master distributor to manufacture or  
3 distribute one or more brands of beer whether by merger,  
4 purchase of corporate shares, purchase of assets, or any other  
5 arrangement.

6 14. "Successor manager" means an individual named or  
7 designated by agreement between a brewer and wholesaler who  
8 succeeds to the role of manager who will be principally  
9 responsible for the daily management of the wholesaler.

10 15. "Territory" means the geographic area of primary sales  
11 responsibility designated by an agreement between a wholesaler  
12 and brewer for one or more brands of beer of the brewer.

13 16. "Wholesaler" means a person, other than a vintner,  
14 brewer, or bottler of beer, who sells, barter, exchanges,  
15 offers for sale, possesses with intent to sell, deals, or  
16 traffics in beer.

17 Sec. 3. NEW SECTION. 123A.3 TERMINATION AND NOTICE OF  
18 CANCELLATION.

19 1. Except as provided in subsection 5, a brewer or  
20 wholesaler shall not amend, modify, cancel, fail to renew, or  
21 otherwise terminate an agreement unless the brewer or  
22 wholesaler furnishes prior notification to the other party in  
23 accordance with subsection 3.

24 2. The notification required under subsection 1 shall be  
25 in writing and sent to the affected party by certified mail  
26 not less than ninety days before the date on which the  
27 agreement will be amended, modified, canceled, not renewed, or  
28 otherwise terminated. The notification shall contain all of  
29 the following:

30 a. A statement of intention to amend, modify, cancel, fail  
31 to renew, or otherwise terminate the agreement.

32 b. A statement enumerating the facts and reasons for the  
33 action, including documentation necessary to fully inform the  
34 wholesaler of the reasons for the action.

35 c. The date on which the action will take effect.

1 3. For each cancellation, nonrenewal, or termination, the  
2 brewer shall have the burden of showing that it has acted in  
3 good faith, that the notice requirements under this section  
4 have been complied with, and that there was good cause for the  
5 cancellation, nonrenewal, or termination.

6 4. Notwithstanding the terms or conditions of any  
7 agreement, good cause exists for the purpose of a  
8 cancellation, nonrenewal, or termination if all of the  
9 following occur:

10 a. The wholesaler fails to comply with a provision of the  
11 agreement which is both reasonable and of material  
12 significance to the business relationship between the  
13 wholesaler and the brewer.

14 b. The brewer first acquired knowledge of the failure  
15 described in paragraph "a" not more than twenty-four months  
16 before the date notification was given pursuant to subsection  
17 3.

18 c. The wholesaler was given notice by the brewer of  
19 failure to comply with the agreement.

20 d. The wholesaler has been given thirty days in which to  
21 submit a plan of corrective action to comply with the  
22 agreement and an additional ninety days to cure the  
23 noncompliance in accordance with the plan, and has failed to  
24 correct the failure to comply with the provisions of the  
25 agreement.

26 5. A brewer may cancel, fail to renew, or otherwise  
27 terminate an agreement without furnishing any prior  
28 notification and without good cause as required in subsection  
29 4 for any of the following reasons:

30 a. The wholesaler's failure to pay any account when due  
31 and upon written demand by the brewer for the payment, in  
32 accordance with agreed upon payment terms.

33 b. The wholesaler's assignment for the benefit of  
34 creditors, or similar disposition, of substantially all of the  
35 assets of the party's business.

1 c. The insolvency of the wholesaler, or the institution of  
2 proceedings in bankruptcy by or against the wholesaler.

3 d. The dissolution or liquidation of the wholesaler.

4 e. The wholesaler's conviction of, or plea of guilty or no  
5 contest, to a charge of violating a law or rule in this state  
6 which materially and adversely affects the ability of either  
7 party to continue to sell beer in this state, or the  
8 revocation or suspension of a license or permit to sell beer  
9 in this state for a period greater than thirty-one days.

10 f. Any attempted transfer of business assets of the  
11 wholesaler, ten percent or more of the voting stock of the  
12 wholesaler or the voting stock of any parent corporation of  
13 the wholesaler, or any change in the beneficial ownership or  
14 control of any wholesaler without obtaining the prior consent  
15 or approval as provided for under section 123A.6.

16 g. The wholesaler's fraudulent conduct relating to a  
17 material matter on the part of the wholesaler in dealings with  
18 the brewer or its product. However, the brewer shall have the  
19 burden of proving fraudulent conduct relating to a material  
20 matter on the part of the wholesaler in any legal action  
21 challenging the termination.

22 h. The wholesaler distributes, sells, or delivers beer to  
23 a retailer whose premises are situated outside the geographic  
24 territory agreed upon by the wholesaler and the brewer as the  
25 area in which the wholesaler will sell beer purchased from the  
26 brewer, without the consent of the brewer and the distributor  
27 who has been assigned the territory by the brewer.

28 Sec. 4. NEW SECTION. 123A.4 CANCELLATION.

29 A brewer or a wholesaler shall not cancel, fail to renew,  
30 or otherwise terminate an agreement unless the party intending  
31 that action has good cause for the cancellation, failure to  
32 renew, or termination, has made good faith efforts to resolve  
33 disagreements, and, in any case in which prior notification is  
34 required under section 123A.3, the party intending to act has  
35 furnished the prior notification and the other party has not

1 eliminated the reasons specified in the notification for  
2 cancellation, failure to renew, or termination, within the  
3 periods provided in section 123A.3, subsection 4, paragraph  
4 "d".

5 Sec. 5. NEW SECTION. 123A.5 PROHIBITED CONDUCT.

6 1. A brewer shall not commit any of the following actions:

7 a. Induce or coerce, or attempt to induce or coerce, any  
8 wholesaler to engage in any illegal act or course of conduct.

9 b. Require a wholesaler to assent to any unreasonable  
10 requirement, condition, understanding, or term of an agreement  
11 prohibiting a wholesaler from selling the product of another  
12 brewer.

13 c. Fix, maintain, or establish the price at which a  
14 wholesaler may resell beer, or to change, by any means, the  
15 price charged to the wholesaler after beer has been ordered by  
16 the wholesaler from the brewer.

17 d. Require any wholesaler to accept delivery of any beer  
18 or any other item or commodity which shall not have been  
19 ordered by the wholesaler.

20 e. Require a wholesaler without the wholesaler's approval  
21 to participate in an arrangement for the payment or crediting  
22 by an electronic fund transfer transaction for any item or  
23 commodity other than beer, or to access a wholesaler's account  
24 for any item or commodity other than beer.

25 f. Require or prohibit any change in the manager or  
26 successor manager of any wholesaler who has been approved by  
27 the brewer as of or subsequent to the effective date of this  
28 Act unless the brewer acts in good faith. If a wholesaler  
29 changes an approved manager or successor manager, a brewer  
30 shall not require or prohibit the change unless the person  
31 selected by the wholesaler fails to meet the  
32 nondiscriminatory, material, and reasonable standards and  
33 qualifications for managers or successor managers consistently  
34 applied to similarly situated wholesalers by the brewer.  
35 However, the brewer shall have the burden of proving that the



1 person fails to meet the reasonable standards and  
2 qualifications.

3 g. Discriminate among the brewer's wholesalers in any  
4 business dealings including, but not limited to, the price of  
5 beer sold to the wholesaler or terms of sale offered to  
6 wholesalers, unless the difference among its wholesalers is  
7 based on reasonable grounds.

8 h. Fail to provide each wholesaler of the brewer's brand  
9 with a written agreement which contains in total the brewer's  
10 agreement with each wholesaler, and designates a specific  
11 exclusive sales territory. The terms of written agreements  
12 executed, amended, or renewed after the effective date of this  
13 Act, shall be consistent with this chapter, and this chapter  
14 may be incorporated by reference in the agreement.

15 i. Enter into an additional agreement with any other  
16 wholesaler for, or to sell to any other wholesaler, the same  
17 brand of beer or brand extension in the same territory or any  
18 portion of the territory, or to sell directly to any retailer  
19 in this state.

20 j. Require a wholesaler to purchase one or more brands of  
21 beer in order for the wholesaler to purchase another brand of  
22 beer for any reason.

23 k. Require a wholesaler, by any means, directly to  
24 participate in or contribute to any local or national  
25 advertising fund controlled directly or indirectly by a  
26 brewer.

27 l. Require by a provision of an agreement or other  
28 instrument in connection with the agreement that any dispute  
29 arising out of or in connection with the agreement be  
30 determined through the application of any other state's laws,  
31 be determined in federal court sitting in a state other than  
32 Iowa, or be determined in a state court of a state other than  
33 this state. A provision contained in any agreement or other  
34 instrument in connection with the agreement which contravenes  
35 this section shall be null and void.

1 2. A wholesaler who, pursuant to an agreement, is granted  
2 a sales territory for which the wholesaler is primarily  
3 responsible or in which the wholesaler is required to  
4 concentrate the wholesaler's efforts, shall not make any sale  
5 or delivery of beer to any retail licensee whose place of  
6 business is not within the territory granted to the wholesaler  
7 unless agreed upon by all affected parties.

8 Sec. 6. NEW SECTION. 123A.6 TRANSFER OF BUSINESS ASSETS  
9 OR STOCK.

10 1. A brewer shall not unreasonably withhold or delay its  
11 approval of any assignment, sale, or transfer of the stock or  
12 other indicia of ownership of a wholesaler or all or any  
13 portion of a wholesaler's assets, wholesaler's voting stock,  
14 the voting stock of any parent corporation, or the beneficial  
15 ownership or control of any other entity owning or controlling  
16 the wholesaler, including the wholesaler's rights and  
17 obligations under the terms of an agreement when the person to  
18 be substituted meets reasonable standards. Upon the death of  
19 one of the partners of a partnership operating the business of  
20 a wholesaler, a brewer shall not deny the surviving partner of  
21 the partnership the right to become a successor-in-interest to  
22 the agreement between the brewer and the partnership, if the  
23 survivor has been active in the management of the partnership  
24 and is otherwise capable of carrying on the business of the  
25 partnership.

26 2. Notwithstanding subsection 1, upon the death of a  
27 wholesaler, a brewer shall not deny approval for any transfer  
28 of ownership or management to a designated member, including  
29 the rights under the agreement with the brewer. The transfer  
30 or assignment shall not be effective until written notice is  
31 given to the brewer, but the brewer's consent to the transfer  
32 or assignment shall not be required.

33 Sec. 7. NEW SECTION. 123A.7 REASONABLE COMPENSATION.

34 1. A brewer who cancels, fails to renew, or terminates  
35 any agreement, or unlawfully denies approval of, or

1 unreasonably withholds consent to any assignment, transfer, or  
2 sale of a wholesaler's business assets or voting stock or  
3 other equity securities, except as provided in this chapter,  
4 shall pay the wholesaler with which the brewer has an  
5 agreement pursuant to this chapter, reasonable compensation  
6 for the fair market value of the wholesaler's business with  
7 relation to the affected brand of beer. The fair market value  
8 of the wholesaler's business shall include, but not be limited  
9 to, its goodwill, if any.

10 2. If a brewer and a wholesaler are unable to mutually  
11 agree on the reasonable compensation to be paid for the value  
12 of the wholesaler's business, either party may maintain a  
13 civil action as provided in section 123A.9, or the matter may,  
14 by mutual agreement of the parties, be submitted to a three-  
15 member arbitration panel consisting of one representative  
16 selected by the brewer but unassociated with the brewer; one  
17 representative selected by the wholesaler but unassociated  
18 with the wholesaler; and an impartial arbitrator selected by  
19 the other two members from a list provided by the American  
20 arbitration association, and the claim settled in accordance  
21 with the rules provided by the American arbitration  
22 association. Arbitration costs shall be paid one-half by the  
23 wholesaler and one-half by the brewer. Arbitration shall be  
24 conducted in accordance with the commercial arbitration rules  
25 of the American arbitration association and the laws of this  
26 state, and judgment upon the award rendered by the arbitrator  
27 may be entered in any court having jurisdiction. The award of  
28 the arbitrator shall be final and binding on the parties.

29 Sec. 8. NEW SECTION. 123A.8 RIGHT OF FREE ASSOCIATION.

30 A brewer or wholesaler shall not restrict or inhibit,  
31 directly or indirectly, the right of free association among  
32 brewers or wholesalers for any lawful purpose.

33 Sec. 9. NEW SECTION. 123A.9 JUDICIAL REMEDIES.

34 1. If a brewer or a wholesaler who is a party to an  
35 agreement pursuant to this chapter fails to comply with this

1 chapter or otherwise engages in conduct prohibited under this  
2 chapter, the aggrieved party may maintain a civil action in  
3 district court if the cause of action directly relates to or  
4 stems from the relationship of the individual parties under  
5 the agreement.

6 2. A brewer or wholesaler may bring an action for  
7 declaratory judgment for determination of any controversy  
8 arising under this chapter or out of the brewer and wholesaler  
9 agreement.

10 3. Upon proper petition to the district court, a brewer or  
11 wholesaler may obtain injunctive relief against a violation of  
12 this chapter.

13 4. In an action under subsection 1, the district court may  
14 grant the relief as the court determines is necessary or  
15 appropriate considering the purposes of this chapter. The  
16 district court may, if it finds that a brewer has acted in bad  
17 faith in invoking the amendment, modification, cancellation,  
18 or termination provision of the agreement between the brewer  
19 and wholesaler, or has unreasonably withheld its consent to  
20 any assignment, transfer, or sale of the wholesaler's  
21 business, award punitive damages, other equitable relief, as  
22 well as actual damages, court costs, and attorney's fees.

23 5. The prevailing party in an action under subsection 1  
24 shall be entitled to actual damages, court costs, and  
25 attorney's fees at the court's discretion.

26 6. With respect to a dispute arising under this chapter or  
27 out of the agreement between a brewer and wholesaler, the  
28 wholesaler and brewer each has the absolute right, before the  
29 wholesaler or brewer has agreed to arbitrate a particular  
30 dispute, to refuse to arbitrate that particular dispute. A  
31 brewer shall not, as a condition of entering into or renewing  
32 an agreement, require the wholesaler to agree to arbitration  
33 in lieu of judicial remedies.

34 7. A brewer shall not take retaliatory action against a  
35 wholesaler who files or manifests an intention to file a

1 complaint of alleged violation of state or federal law or  
2 regulation by the brewer with the appropriate state or federal  
3 regulatory authority. Retaliatory action shall include, but  
4 shall not be limited to, refusal without good cause to  
5 continue the agreement, or a material reduction in the quality  
6 of service or quantity of products available to the wholesaler  
7 under the agreement, or impede the normal business operations  
8 of the wholesaler.

9 Sec. 10. NEW SECTION. 123A.10 WAIVER -- PROHIBITED.

10 A brewer shall not require a wholesaler to waive compliance  
11 with any provision of this chapter. This chapter shall not be  
12 construed to limit or prohibit a good faith settlement of a  
13 dispute voluntarily entered into between the parties.

14 Sec. 11. NEW SECTION. 123A.11 INDEMNIFICATION.

15 A brewer shall fully indemnify and hold harmless the  
16 brewer's wholesaler against any losses, including, but not  
17 limited to, court costs and reasonable attorney's fees or  
18 damages arising out of complaints, claims, or lawsuits,  
19 including, but not limited to, strict liability, negligence,  
20 misrepresentation, or express or implied warranty where the  
21 complaint, claim, or lawsuit relates to the manufacture or  
22 packaging of beer or other functions by the brewer which are  
23 beyond the control of the wholesaler.

24 Sec. 12. NEW SECTION. 123A.12 APPLICATION TO EXISTING  
25 AGREEMENTS.

26 1. The provisions of this chapter apply to a valid  
27 agreement in effect immediately before the effective date of  
28 this Act when the first of the following dates occurs:

29 a. On the effective date of the next amendment,  
30 modification, or renewal of the existing valid agreement.

31 b. On the next anniversary date of the execution of the  
32 original agreement between the wholesaler and the brewer.

33 2. If no written agreement exists, the provisions of the  
34 chapter apply to the implied or oral unwritten agreement of a  
35 brewer and a wholesaler of that brewery on the effective date

1 of this Act.

2

EXPLANATION

3 This bill provides for the regulation of business relations  
4 between beer brewers and beer wholesalers. The conditions are  
5 listed under which an agreement between a brewer and the  
6 brewer's wholesaler may be terminated or canceled. The bill  
7 also lists prohibited conduct for brewers and wholesalers and  
8 provides for the transfer of business interests upon the death  
9 of a business partner and under certain other conditions.

10 The bill also establishes judicial remedies for breaches of  
11 the agreements and prohibits retaliatory actions against a  
12 brewer or a wholesaler. A brewer is prohibited from a number  
13 of actions such as: requiring unreasonable conditions which  
14 prohibit a wholesaler from selling the product of another  
15 brewer; fixing a retail price or changing a wholesale price  
16 after the product is ordered; requiring the acceptance of  
17 delivery of a product which was not ordered; requiring the  
18 electronic transfer of payments for certain products without  
19 the wholesaler's concurrence; or discriminating in business  
20 dealings among wholesalers without reasonable grounds. A  
21 wholesaler is prohibited from selling beer outside the  
22 assigned territory without permission.

23 The bill also provides for the compensation of a wholesaler  
24 if a brewer cancels or fails to renew an agreement or  
25 unlawfully denies approval of, or unreasonably withholds  
26 consent to any sale or assignment of a wholesaler's business  
27 assets. The wholesaler is entitled to the fair market value  
28 of the business. If agreement is not reached as to the price,  
29 a civil action may be filed or an arbitration panel may be  
30 used.

31 This bill applies to existing written agreements on the  
32 effective date of the next amendment, modification, or renewal  
33 of the agreement, or on the next anniversary of a valid  
34 agreement between a brewer and a wholesaler, whichever date is  
35 first, and to unwritten agreements on the effective date of

1 the bill.

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LSB 1663SV 76

H- 3/13/95 State Good  
H- 3/28/95 Do Pass

SENATE FILE 207  
BY COMMITTEE ON STATE GOVERNMENT

(SUCCESSOR TO SSB 174)

(AS AMENDED AND PASSED BY THE SENATE MARCH 9, 1995)

\_\_\_\_\_ - New Language by the Senate

Passed Senate, Date \_\_\_\_\_ Passed House, Date 4-10-95  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes 82 Nays 16  
Approved April 26, 1995

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SENATE FILE 207

H-3727

1 Amend Senate File 207, as amended, passed, and  
2 reprinted by the Senate, as follows:  
3 1. Page 2, line 29, by striking the words "who is  
4 engaged in" and inserting the following: "whose  
5 principal business is".

By VANDE HOEF of Osceola  
RENKEN of Grundy

H-3727 FILED APRIL 4, 1995

*Rest 4-10-95  
(P. 1380)*

S.F. 207

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8 toward these ends by:

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15 distribute and maintain satisfactory sales levels.

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18 Sec. 2. NEW SECTION. 123A.2 DEFINITIONS.

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28 resell, and distribute one or more brands of beer offered by a  
29 brewer, or a contract or arrangement in which a brewer grants  
30 to a wholesaler a license to use a trade name, trademark,  
31 service mark, or related characteristic and in which there is  
32 a community of interest in the marketing of the products of  
33 the brewer. An agreement exists when one or more of the  
34 following occur:

35 a. A brewer has shipped beer to a wholesaler or accepted

1 an order for beer from a wholesaler.

2 b. A brewer purchases the right to manufacture a beer  
3 product, the right to use the trade name for the product, or  
4 the right to distribute a product from another brewer with  
5 whom the wholesaler has an agreement.

6 3. "Beer" means any liquid capable of being used for  
7 beverage purposes made by the fermentation of an infusion in  
8 potable water of barley, malt, and hops with or without  
9 unmalted grains or decorticated and degerminated grains, or  
10 made by the fermentation of, or by distillation of the  
11 fermented products of fruit, fruit extracts, or other  
12 agricultural products, containing more than one-half of one  
13 percent of alcohol by volume but not more than five percent of  
14 alcohol by weight but not including mixed drinks or cocktails  
15 mixed on the premises.

16 4. "Brand" means a word, name, group of letters, symbol,  
17 or a combination of words, names, letters, or symbols adopted  
18 and used by a brewer to identify a specific beer product, and  
19 to distinguish that beer product from other beer products  
20 brewed or marketed by that brewery or other breweries.

21 5. "Brand extension" means a brand which incorporates all  
22 or a substantial part of the unique features of a preexisting  
23 brand of the same brewery and which relies to a significant  
24 extent on the goodwill associated with the preexisting brand.  
25 However, a general corporate logo or symbol or an advertising  
26 message, whether appearing on the product packaging or  
27 elsewhere, is not a brand, brand extension, or part of a brand  
28 or brand extension.

29 6. "Brewer" means a person who is engaged in the  
30 manufacture of beer for the purpose of sale, barter, exchange,  
31 or transportation, a master distributor, or a fermenter,  
32 processor, bottler, packager, or importer of beer, or a  
33 successor brewer.

34 7. "Designated member" means a deceased wholesaler's  
35 spouse, child, grandchild, parent, brother, or sister, who is

1 entitled to inherit the deceased wholesaler's ownership  
2 interest under the terms of the deceased wholesaler's will,  
3 other testamentary device, or the laws of intestate  
4 succession. With respect to an incapacitated individual  
5 having an ownership interest in a wholesaler, "designated  
6 member" also means a person appointed by the court as the  
7 conservator of the individual's property. "Designated member"  
8 also includes the appointed and qualified personal  
9 representative and the testamentary trustee of a deceased  
10 wholesaler.

11 8. "Good cause" exists if the wholesaler or affected party  
12 has failed to comply with reasonable requirements which are  
13 imposed upon the wholesaler or affected party through an  
14 agreement, which do not discriminate either by their terms or  
15 in the methods of their enforcement as compared with  
16 requirements imposed on other similarly situated wholesalers  
17 by the brewer, and which are not in violation of any law or  
18 administrative rule.

19 9. "Good faith" means honesty in fact and the observance  
20 of reasonable commercial standards of fair dealing in the  
21 trade and defined and interpreted under section 554.2103.

22 10. "Manager" means an individual named or designated by  
23 agreement between the brewer and wholesaler, who is  
24 principally responsible for the daily management of the  
25 wholesaler.

26 11. "Master distributor" means a wholesaler who acts in  
27 the role of or in a similar capacity as a brewer or outside  
28 seller of one or more brands of beer to other wholesalers on a  
29 regular basis in the normal course of business.

30 12. "Reasonable standards and qualifications" means those  
31 criteria applied by the brewer to similarly situated  
32 wholesalers during a period of twenty-four months before a  
33 proposed change in a successor manager of the wholesaler's  
34 business.

35 13. "Similarly situated wholesalers" means wholesalers of

1 a brewer that are of a generally comparable size, and operate  
2 in markets with similar demographic characteristics, including  
3 population size, density, distribution, and vital statistics,  
4 and reasonably similar economic and geographic conditions.

5 14. "Successor brewer" means a person who succeeds to the  
6 role of a brewer or master distributor to manufacture or  
7 distribute one or more brands of beer whether by merger,  
8 purchase of corporate shares, purchase of assets, or any other  
9 arrangement.

10 15. "Successor manager" means an individual named or  
11 designated by agreement between a brewer and wholesaler who  
12 succeeds to the role of manager who will be principally  
13 responsible for the daily management of the wholesaler.

14 16. "Territory" means the geographic area of primary sales  
15 responsibility designated by an agreement between a wholesaler  
16 and brewer for one or more brands of beer of the brewer.

17 17. "Wholesaler" means a person, other than a vintner,  
18 brewer, or bottler of beer, who sells, barter, exchanges,  
19 offers for sale, possesses with intent to sell, deals, or  
20 traffics in beer.

21 Sec. 3. NEW SECTION. 123A.3 TERMINATION AND NOTICE OF  
22 CANCELLATION.

23 1. Except as provided in subsection 5, a brewer or  
24 wholesaler shall not amend, modify, cancel, fail to renew, or  
25 otherwise terminate an agreement unless the brewer or  
26 wholesaler furnishes prior notification to the other party in  
27 accordance with subsection 3.

28 2. The notification required under subsection 1 shall be  
29 in writing and sent to the affected party by certified mail  
30 not less than ninety days before the date on which the  
31 agreement will be amended, modified, canceled, not renewed, or  
32 otherwise terminated. The notification shall contain all of  
33 the following:

34 a. A statement of intention to amend, modify, cancel, fail  
35 to renew, or otherwise terminate the agreement.

1 b. A statement enumerating the facts and reasons for the  
2 action, including documentation necessary to fully inform the  
3 wholesaler of the reasons for the action.

4 c. The date on which the action will take effect.

5 3. For each cancellation, nonrenewal, or termination, the  
6 brewer shall have the burden of showing that it has acted in  
7 good faith, that the notice requirements under this section  
8 have been complied with, and that there was good cause for the  
9 cancellation, nonrenewal, or termination.

10 4. Notwithstanding the terms or conditions of any  
11 agreement, good cause exists for the purpose of a  
12 cancellation, nonrenewal, or termination if all of the  
13 following occur:

14 a. The wholesaler fails to comply with a provision of the  
15 agreement which is both reasonable and of material  
16 significance to the business relationship between the  
17 wholesaler and the brewer.

18 b. The brewer first acquired knowledge of the failure  
19 described in paragraph "a" not more than twenty-four months  
20 before the date notification was given pursuant to subsection  
21 3.

22 c. The wholesaler was given notice by the brewer of  
23 failure to comply with the agreement.

24 d. The wholesaler has been given thirty days in which to  
25 submit a plan of corrective action to comply with the  
26 agreement and an additional ninety days to cure the  
27 noncompliance in accordance with the plan, and has failed to  
28 correct the failure to comply with the provisions of the  
29 agreement.

30 5. A brewer may cancel, fail to renew, or otherwise  
31 terminate an agreement without furnishing any prior  
32 notification and without good cause as required in subsection  
33 4 for any of the following reasons:

34 a. The wholesaler's failure to pay any account when due  
35 and upon written demand by the brewer for the payment, in

1 accordance with agreed upon payment terms.

2 b. The wholesaler's assignment for the benefit of  
3 creditors, or similar disposition, of substantially all of the  
4 assets of the party's business.

5 c. The insolvency of the wholesaler, or the institution of  
6 proceedings in bankruptcy by or against the wholesaler.

7 d. The dissolution or liquidation of the wholesaler.

8 e. The wholesaler's conviction of, or plea of guilty or no  
9 contest, to a charge of violating a law or rule in this state  
10 which materially and adversely affects the ability of either  
11 party to continue to sell beer in this state, or the  
12 revocation or suspension of a license or permit to sell beer  
13 in this state for a period greater than thirty-one days.

14 f. Any attempted transfer of business assets of the  
15 wholesaler, ten percent or more of the voting stock of the  
16 wholesaler or the voting stock of any parent corporation of  
17 the wholesaler, or any change in the beneficial ownership or  
18 control of any wholesaler without obtaining the prior consent  
19 or approval as provided for under section 123A.6.

20 g. The wholesaler's fraudulent conduct relating to a  
21 material matter on the part of the wholesaler in dealings with  
22 the brewer or its product. However, the brewer shall have the  
23 burden of proving fraudulent conduct relating to a material  
24 matter on the part of the wholesaler in any legal action  
25 challenging the termination.

26 h. The wholesaler distributes, sells, or delivers beer to  
27 a retailer whose premises are situated outside the geographic  
28 territory agreed upon by the wholesaler and the brewer as the  
29 area in which the wholesaler will sell beer purchased from the  
30 brewer, without the consent of the brewer and the distributor  
31 who has been assigned the territory by the brewer.

32 Sec. 4. NEW SECTION. 123A.4 CANCELLATION.

33 A brewer or a wholesaler shall not cancel, fail to renew,  
34 or otherwise terminate an agreement unless the party intending  
35 that action has good cause for the cancellation, failure to

1 renew, or termination, has made good faith efforts to resolve  
2 disagreements, and, in any case in which prior notification is  
3 required under section 123A.3, the party intending to act has  
4 furnished the prior notification and the other party has not  
5 eliminated the reasons specified in the notification for  
6 cancellation, failure to renew, or termination, within the  
7 periods provided in section 123A.3, subsection 4, paragraph  
8 "d".

9 Sec. 5. NEW SECTION. 123A.5 PROHIBITED CONDUCT.

10 1. A brewer shall not commit any of the following actions:

11 a. Induce or coerce, or attempt to induce or coerce, any  
12 wholesaler to engage in any illegal act or course of conduct.

13 b. Require a wholesaler to assent to any unreasonable  
14 requirement, condition, understanding, or term of an agreement  
15 prohibiting a wholesaler from selling the product of another  
16 brewer.

17 c. Fix, maintain, or establish the price at which a  
18 wholesaler may resell beer, or to change, by any means, the  
19 price charged to the wholesaler after beer has been ordered by  
20 the wholesaler from the brewer.

21 d. Require any wholesaler to accept delivery of any beer  
22 or any other item or commodity which shall not have been  
23 ordered by the wholesaler.

24 e. Require a wholesaler without the wholesaler's approval  
25 to participate in an arrangement for the payment or crediting  
26 by an electronic fund transfer transaction for any item or  
27 commodity other than beer, or to access a wholesaler's account  
28 for any item or commodity other than beer.

29 f. Require or prohibit any change in the manager or  
30 successor manager of any wholesaler who has been approved by  
31 the brewer as of or subsequent to the effective date of this  
32 Act unless the brewer acts in good faith. If a wholesaler  
33 changes an approved manager or successor manager, a brewer  
34 shall not require or prohibit the change unless the person  
35 selected by the wholesaler fails to meet the

1 nondiscriminatory, material, and reasonable standards and  
2 qualifications for managers or successor managers consistently  
3 applied to similarly situated wholesalers by the brewer.  
4 However, the brewer shall have the burden of proving that the  
5 person fails to meet the reasonable standards and  
6 qualifications.

7 g. Discriminate among the brewer's wholesalers in any  
8 business dealings including, but not limited to, the price of  
9 beer sold to the wholesaler or terms of sale offered to  
10 wholesalers, unless the difference among its wholesalers is  
11 based on reasonable grounds.

12 h. Fail to provide each wholesaler of the brewer's brand  
13 with a written agreement which contains in total the brewer's  
14 agreement with each wholesaler, and designates a specific  
15 exclusive sales territory. The terms of written agreements  
16 executed, amended, or renewed after the effective date of this  
17 Act, shall be consistent with this chapter, and this chapter  
18 may be incorporated by reference in the agreement.

19 i. Enter into an additional agreement with any other  
20 wholesaler for, or to sell to any other wholesaler, the same  
21 brand of beer or brand extension in the same territory or any  
22 portion of the territory, or to sell directly to any retailer  
23 in this state.

24 j. Require a wholesaler to purchase one or more brands of  
25 beer in order for the wholesaler to purchase another brand of  
26 beer for any reason.

27 k. Require a wholesaler, by any means, directly to  
28 participate in or contribute to any local or national  
29 advertising fund controlled directly or indirectly by a  
30 brewer.

31 l. Require by a provision of an agreement or other  
32 instrument in connection with the agreement that any dispute  
33 arising out of or in connection with the agreement be  
34 determined through the application of any other state's laws,  
35 be determined in federal court sitting in a state other than



1 Iowa, or be determined in a state court of a state other than  
2 this state. A provision contained in any agreement or other  
3 instrument in connection with the agreement which contravenes  
4 this section shall be null and void.

5 2. A wholesaler who, pursuant to an agreement, is granted  
6 a sales territory for which the wholesaler is primarily  
7 responsible or in which the wholesaler is required to  
8 concentrate the wholesaler's efforts, shall not make any sale  
9 or delivery of beer to any retail licensee whose place of  
10 business is not within the territory granted to the wholesaler  
11 unless agreed upon by all affected parties.

12 Sec. 6. NEW SECTION. 123A.6 TRANSFER OF BUSINESS ASSETS  
13 OR STOCK.

14 1. A brewer shall not unreasonably withhold or delay its  
15 approval of any assignment, sale, or transfer of the stock or  
16 other indicia of ownership of a wholesaler or all or any  
17 portion of a wholesaler's assets, wholesaler's voting stock,  
18 the voting stock of any parent corporation, or the beneficial  
19 ownership or control of any other entity owning or controlling  
20 the wholesaler, including the wholesaler's rights and  
21 obligations under the terms of an agreement when the person to  
22 be substituted meets reasonable standards. Upon the death of  
23 one of the partners of a partnership operating the business of  
24 a wholesaler, a brewer shall not deny the surviving partner of  
25 the partnership the right to become a successor-in-interest to  
26 the agreement between the brewer and the partnership, if the  
27 survivor has been active in the management of the partnership  
28 and is otherwise capable of carrying on the business of the  
29 partnership.

30 2. Notwithstanding subsection 1, upon the death of a  
31 wholesaler, a brewer shall not deny approval for any transfer  
32 of ownership or management to a designated member, including  
33 the rights under the agreement with the brewer. The transfer  
34 or assignment shall not be effective until written notice is  
35 given to the brewer, but the brewer's consent to the transfer

1 or assignment shall not be required.

2 Sec. 7. NEW SECTION. 123A.7 REASONABLE COMPENSATION.

3 1. A brewer who cancels, fails to renew, or terminates any  
4 agreement, or unlawfully denies approval of, or unreasonably  
5 withholds consent to any assignment, transfer, or sale of a  
6 wholesaler's business assets or voting stock or other equity  
7 securities, except as provided in this chapter, shall pay the  
8 wholesaler with which the brewer has an agreement pursuant to  
9 this chapter, reasonable compensation for the fair market  
10 value of the wholesaler's business with relation to the  
11 affected brand of beer. The fair market value of the  
12 wholesaler's business shall include, but not be limited to,  
13 its goodwill, if any.

14 2. If a brewer and a wholesaler are unable to mutually  
15 agree on the reasonable compensation to be paid for the value  
16 of the wholesaler's business, either party may maintain a  
17 civil action as provided in section 123A.9, or the matter may,  
18 by mutual agreement of the parties, be submitted to a three-  
19 member arbitration panel consisting of one representative  
20 selected by the brewer but unassociated with the brewer; one  
21 representative selected by the wholesaler but unassociated  
22 with the wholesaler; and an impartial arbitrator selected by  
23 the other two members from a list provided by the American  
24 arbitration association, and the claim settled in accordance  
25 with the rules provided by the American arbitration  
26 association. Arbitration costs shall be paid one-half by the  
27 wholesaler and one-half by the brewer. Arbitration shall be  
28 conducted in accordance with the commercial arbitration rules  
29 of the American arbitration association and the laws of this  
30 state, and judgment upon the award rendered by the arbitrator  
31 may be entered in any court having jurisdiction. The award of  
32 the arbitrator shall be final and binding on the parties.

33 Sec. 8. NEW SECTION. 123A.8 RIGHT OF FREE ASSOCIATION.

34 A brewer or wholesaler shall not restrict or inhibit,  
35 directly or indirectly, the right of free association among

1 brewers or wholesalers for any lawful purpose.

2 Sec. 9. NEW SECTION. 123A.9 JUDICIAL REMEDIES.

3 1. If a brewer or a wholesaler who is a party to an  
4 agreement pursuant to this chapter fails to comply with this  
5 chapter or otherwise engages in conduct prohibited under this  
6 chapter, the aggrieved party may maintain a civil action in  
7 district court if the cause of action directly relates to or  
8 stems from the relationship of the individual parties under  
9 the agreement.

10 2. A brewer or wholesaler may bring an action for  
11 declaratory judgment for determination of any controversy  
12 arising under this chapter or out of the brewer and wholesaler  
13 agreement.

14 3. Upon proper petition to the district court, a brewer or  
15 wholesaler may obtain injunctive relief against a violation of  
16 this chapter.

17 4. In an action under subsection 1, the district court may  
18 grant the relief as the court determines is necessary or  
19 appropriate considering the purposes of this chapter. The  
20 district court may, if it finds that a brewer has acted in bad  
21 faith in invoking the amendment, modification, cancellation,  
22 nonrenewal, or termination provision of the agreement between  
23 the brewer and wholesaler, or has unreasonably withheld its  
24 consent to any assignment, transfer, or sale of the  
25 wholesaler's business, award equitable relief, actual damages,  
26 court costs, and attorney's fees.

27 5. The prevailing party in an action under subsection 1  
28 shall be entitled to actual damages, court costs, and  
29 attorney's fees at the court's discretion.

30 6. With respect to a dispute arising under this chapter or  
31 out of the agreement between a brewer and wholesaler, the  
32 wholesaler and brewer each has the absolute right, before the  
33 wholesaler or brewer has agreed to arbitrate a particular  
34 dispute, to refuse to arbitrate that particular dispute. A  
35 brewer shall not, as a condition of entering into or renewing

1 an agreement, require the wholesaler to agree to arbitration  
2 in lieu of judicial remedies.

3 7. A brewer shall not take retaliatory action against a  
4 wholesaler who files or manifests an intention to file a  
5 complaint of alleged violation of state or federal law or  
6 regulation by the brewer with the appropriate state or federal  
7 regulatory authority. Retaliatory action shall include, but  
8 shall not be limited to, refusal without good cause to  
9 continue the agreement, or a material reduction in the quality  
10 of service or quantity of products available to the wholesaler  
11 under the agreement, or impede the normal business operations  
12 of the wholesaler.

13 Sec. 10. NEW SECTION. 123A.10 WAIVER -- PROHIBITED.

14 A brewer shall not require a wholesaler to waive compliance  
15 with any provision of this chapter. This chapter shall not be  
16 construed to limit or prohibit a good faith settlement of a  
17 dispute voluntarily entered into between the parties.

18 Sec. 11. NEW SECTION. 123A.11 INDEMNIFICATION.

19 A brewer shall fully indemnify and hold harmless the  
20 brewer's wholesaler against any losses, including, but not  
21 limited to, court costs and reasonable attorney's fees or  
22 damages arising out of complaints, claims, or lawsuits,  
23 including, but not limited to, strict liability, negligence,  
24 misrepresentation, or express or implied warranty where the  
25 complaint, claim, or lawsuit relates to the manufacture or  
26 packaging of beer or other functions by the brewer which are  
27 beyond the control of the wholesaler.

28 Sec. 12. NEW SECTION. 123A.12 APPLICATION TO EXISTING  
29 AGREEMENTS.

30 1. The provisions of this chapter apply to a valid  
31 agreement in effect immediately before the effective date of  
32 this Act when the first of the following dates occurs:

33 a. On the effective date of the next amendment,  
34 modification, or renewal of the existing valid agreement.

35 b. On the next anniversary date of the execution of the

1 original agreement between the wholesaler and the brewer.

2 2. If no written agreement exists, the provisions of the  
3 chapter apply to the implied or oral unwritten agreement of a  
4 brewer and a wholesaler of that brewery on the effective date  
5 of this Act.

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SSB-174  
State Government

Succeeded By  
SF/HF 207  
SENATE FILE

BY (PROPOSED COMMITTEE ON STATE  
GOVERNMENT BILL BY CHAIR-  
PERSON GRONSTAL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to the distribution and sale of beer, providing  
2 for the regulation of brewer and wholesaler agreements,  
3 prohibiting certain conduct, providing for the transfer of  
4 business assets, providing judicial remedies, specifying  
5 applicability, and providing for other properly related  
6 matters.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 123A.1 PURPOSES AND SCOPE.

2 This chapter is enacted pursuant to the authority of the  
3 state under the provisions of the twenty-first amendment to  
4 the Constitution of the United States to promote the public's  
5 interest in fair, efficient, and competitive distribution of  
6 beer products through regulation and encouragement of brewer  
7 and wholesaler vendors to conduct their business relations  
8 toward these ends by:

9 1. Assuring that the beer wholesaler is free to manage its  
10 business enterprise.

11 2. Assuring the brewer and the public of service from  
12 wholesalers who will devote reasonable efforts and resources  
13 to distribution and sales of all of the brewer's products  
14 which the wholesaler has been granted the right to sell and  
15 distribute and maintain satisfactory sales levels.

16 3. Promoting and maintaining a sound, stable, and viable  
17 three-tier system of distribution of beer to the public.

18 Sec. 2. NEW SECTION. 123A.2 DEFINITIONS.

19 As used in this chapter, unless the context otherwise  
20 requires:

21 1. "Affected party" means a wholesaler, brewer, master  
22 distributor, successor brewer, or any person that is a party  
23 to an agreement.

24 2. "Agreement" means a contract or arrangement whether  
25 expressed or implied, oral or written, for a definite or  
26 indefinite period between a brewer and a wholesaler pursuant  
27 to which a wholesaler has been granted the right to purchase,  
28 resell, and distribute one or more brands of beer offered by a  
29 brewer, or a contract or arrangement in which a brewer grants  
30 to a wholesaler a license to use a trade name, trademark,  
31 service mark, or related characteristic and in which there is  
32 a community of interest in the marketing of the products of  
33 the brewer. An agreement exists when one or more of the  
34 following occur:

35 a. A brewer has shipped beer to a wholesaler or accepted

1 an order for beer from a wholesaler.

2     b. A brewer purchases the right to manufacture a beer  
3 product, the right to use the trade name for the product, or  
4 the right to distribute a product from another brewer with  
5 whom the wholesaler has an agreement.

6     3. "Beer" means any liquid capable of being used for  
7 beverage purposes made by the fermentation of an infusion in  
8 potable water of barley, malt, and hops with or without  
9 unmalted grains or decorticated and degerminated grains, or  
10 made by the fermentation of, or by distillation of the  
11 fermented products of fruit, fruit extracts, or other  
12 agricultural products, containing more than one-half of one  
13 percent of alcohol by volume but not more than five percent of  
14 alcohol by weight but not including mixed drinks or cocktails  
15 mixed on the premises.

16     4. "Brand" means a word, name, group of letters, symbol,  
17 or a combination of words, names, letters, or symbols adopted  
18 and used by a brewer to identify a specific beer product, and  
19 to distinguish that beer product from other beer products  
20 brewed or marketed by that brewery or other breweries.

21     5. "Brand extension" means a brand which incorporates all  
22 or a substantial part of the unique features of a preexisting  
23 brand of the same brewery and which relies to a significant  
24 extent on the goodwill associated with the preexisting brand.  
25 However, a general corporate logo or symbol or an advertising  
26 message, whether appearing on the product packaging or  
27 elsewhere, is not a brand, brand extension, or part of a brand  
28 or brand extension.

29     6. "Brewer" means a person who is engaged in the  
30 manufacture of beer for the purpose of sale, barter, exchange,  
31 or transportation, a master distributor, or a fermenter,  
32 processor, bottler, packager, or importer of beer, or a  
33 successor brewer.

34     7. "Designated member" means a deceased wholesaler's  
35 spouse, child, grandchild, parent, brother, or sister, who is



1 entitled to inherit the deceased wholesaler's ownership  
2 interest under the terms of the deceased wholesaler's will,  
3 other testamentary device, or the laws of intestate  
4 succession. With respect to an incapacitated individual  
5 having an ownership interest in a wholesaler, "designated  
6 member" also means a person appointed by the court as the  
7 conservator of the individual's property. "Designated member"  
8 also includes the appointed and qualified personal  
9 representative and the testamentary trustee of a deceased  
10 wholesaler.

11 8. "Good cause" exists if the wholesaler or affected party  
12 has failed to comply with reasonable requirements which are  
13 imposed upon the wholesaler or affected party through an  
14 agreement, which do not discriminate either by their terms or  
15 in the methods of their enforcement as compared with  
16 requirements imposed on other similarly situated wholesalers  
17 by the brewer, and which are not in violation of any law or  
18 administrative rule.

19 9. "Good faith" means honesty in fact and the observance  
20 of reasonable commercial standards of fair dealing in the  
21 trade.

22 10. "Master distributor" means a wholesaler who acts in  
23 the role of or in a similar capacity as a brewer or outside  
24 seller of one or more brands of beer to other wholesalers on a  
25 regular basis in the normal course of business.

26 11. "Reasonable standards and qualifications" means those  
27 criteria applied by the brewer to similarly situated  
28 wholesalers during a period of twenty-four months before a  
29 proposed change in a successor manager of the wholesaler's  
30 business.

31 12. "Similarly situated wholesalers" means wholesalers of  
32 a brewer that are of a generally comparable size, and operate  
33 in markets with similar demographic characteristics, including  
34 population size, density, distribution, and vital statistics,  
35 and reasonably similar economic and geographic conditions.

1 13. "Successor brewer" means a person who succeeds to the  
2 role of a brewer or master distributor to manufacture or  
3 distribute one or more brands of beer whether by merger,  
4 purchase of corporate shares, purchase of assets, or any other  
5 arrangement.

6 14. "Successor manager" means an individual named or  
7 designated by agreement between a brewer and wholesaler who  
8 succeeds to the role of manager who will be principally  
9 responsible for the daily management of the wholesaler.

10 15. "Territory" means the geographic area of primary sales  
11 responsibility designated by an agreement between a wholesaler  
12 and brewer for one or more brands of beer of the brewer.

13 16. "Wholesaler" means a person, other than a vintner,  
14 brewer, or bottler of beer, who sells, barter, exchanges,  
15 offers for sale, possesses with intent to sell, deals, or  
16 traffics in beer.

17 Sec. 3. NEW SECTION. 123A.3 TERMINATION AND NOTICE OF  
18 CANCELLATION.

19 1. Except as provided in subsection 5, a brewer or  
20 wholesaler shall not amend, modify, cancel, fail to renew, or  
21 otherwise terminate an agreement unless the brewer or  
22 wholesaler furnishes prior notification to the other party in  
23 accordance with subsection 3.

24 2. The notification required under subsection 1 shall be  
25 in writing and sent to the affected party by certified mail  
26 not less than ninety days before the date on which the  
27 agreement will be amended, modified, canceled, not renewed, or  
28 otherwise terminated. The notification shall contain all of  
29 the following:

30 a. A statement of intention to amend, modify, cancel, fail  
31 to renew, or otherwise terminate the agreement.

32 b. A statement enumerating the facts and reasons for the  
33 action, including documentation necessary to fully inform the  
34 wholesaler of the reasons for the action.

35 c. The date on which the action will take effect.

1 3. For each cancellation, nonrenewal, or termination, the  
2 brewer shall have the burden of showing that it has acted in  
3 good faith, that the notice requirements under this section  
4 have been complied with, and that there was good cause for the  
5 cancellation, nonrenewal, or termination.

6 4. Notwithstanding the terms or conditions of any  
7 agreement, good cause exists for the purpose of a  
8 cancellation, nonrenewal, or termination if all of the  
9 following occur:

10 a. The wholesaler fails to comply with a provision of the  
11 agreement which is both reasonable and of material  
12 significance to the business relationship between the  
13 wholesaler and the brewer.

14 b. The brewer first acquired knowledge of the failure  
15 described in paragraph "a" not more than twenty-four months  
16 before the date notification was given pursuant to subsection  
17 3.

18 c. The wholesaler was given notice by the brewer of  
19 failure to comply with the agreement.

20 d. The wholesaler has been given thirty days in which to  
21 submit a plan of corrective action to comply with the  
22 agreement and an additional ninety days to cure the  
23 noncompliance in accordance with the plan, and has failed to  
24 correct the failure to comply with the provisions of the  
25 agreement.

26 5. A brewer may cancel, fail to renew, or otherwise  
27 terminate an agreement without furnishing any prior  
28 notification and without good cause as required in subsection  
29 4 for any of the following reasons:

30 a. The wholesaler's failure to pay any account when due  
31 and upon written demand by the brewer for the payment, in  
32 accordance with agreed upon payment terms.

33 b. The wholesaler's assignment for the benefit of  
34 creditors, or similar disposition, of substantially all of the  
35 assets of the party's business.

1 c. The insolvency of the wholesaler, or the institution of  
2 proceedings in bankruptcy by or against the wholesaler.

3 d. The dissolution or liquidation of the wholesaler.

4 e. The wholesaler's conviction of, or plea of guilty or no  
5 contest, to a charge of violating a law or rule in this state  
6 which materially and adversely affects the ability of either  
7 party to continue to sell beer in this state, or the  
8 revocation or suspension of a license or permit to sell beer  
9 in this state for a period greater than thirty-one days.

10 f. Any attempted transfer of business assets of the  
11 wholesaler, ten percent or more of the voting stock of the  
12 wholesaler or the voting stock of any parent corporation of  
13 the wholesaler, or any change in the beneficial ownership or  
14 control of any wholesaler without obtaining the prior consent  
15 or approval as provided for under section 123A.6.

16 g. The wholesaler's fraudulent conduct relating to a  
17 material matter on the part of the wholesaler in dealings with  
18 the brewer or its product. However, the brewer shall have the  
19 burden of proving fraudulent conduct relating to a material  
20 matter on the part of the wholesaler in any legal action  
21 challenging the termination.

22 h. The wholesaler distributes, sells, or delivers beer to  
23 a retailer whose premises are situated outside the geographic  
24 territory agreed upon by the wholesaler and the brewer as the  
25 area in which the wholesaler will sell beer purchased from the  
26 brewer, without the consent of the brewer and the distributor  
27 who has been assigned the territory by the brewer.

28 Sec. 4. NEW SECTION. 123A.4 CANCELLATION.

29 A brewer or a wholesaler shall not cancel, fail to renew,  
30 or otherwise terminate an agreement unless the party intending  
31 that action has good cause for the cancellation, failure to  
32 renew, or termination, has made good faith efforts to resolve  
33 disagreements, and, in any case in which prior notification is  
34 required under section 123A.3, the party intending to act has  
35 furnished the prior notification and the other party has not

1 eliminated the reasons specified in the notification for  
2 cancellation, failure to renew, or termination, within the  
3 periods provided in section 123A.3, subsection 2, paragraph  
4 "d".

5 Sec. 5. NEW SECTION. 123A.5 PROHIBITED CONDUCT.

6 1. A brewer shall not commit any of the following actions:

7 a. Induce or coerce, or attempt to induce or coerce, any  
8 wholesaler to engage in any illegal act or course of conduct.

9 b. Require a wholesaler to assent to any unreasonable  
10 requirement, condition, understanding, or term of an agreement  
11 prohibiting a wholesaler from selling the product of another  
12 brewer.

13 c. Fix, maintain, or establish the price at which a  
14 wholesaler may resell beer, or to change, by any means, the  
15 price charged to the wholesaler after beer has been ordered by  
16 the wholesaler from the brewer.

17 d. Require any wholesaler to accept delivery of any beer  
18 or any other item or commodity which shall not have been  
19 ordered by the wholesaler.

20 e. Require a wholesaler without the wholesaler's approval  
21 to participate in an arrangement for the payment or crediting  
22 by an electronic fund transfer transaction for any item or  
23 commodity other than beer, or to access a wholesaler's account  
24 for any item or commodity other than beer.

25 f. Require or prohibit any change in the manager or  
26 successor manager of any wholesaler who has been approved by  
27 the brewer as of or subsequent to the effective date of this  
28 Act unless the brewer acts in good faith. If a wholesaler  
29 changes an approved manager or successor manager, a brewer  
30 shall not require or prohibit the change unless the person  
31 selected by the wholesaler fails to meet the  
32 nondiscriminatory, material, and reasonable standards and  
33 qualifications for managers or successor managers consistently  
34 applied to similarly situated wholesalers by the brewer.  
35 However, the brewer shall have the burden of proving that the

1 person fails to meet the reasonable standards and  
2 qualifications.

3 g. Discriminate among the brewer's wholesalers in any  
4 business dealings including, but not limited to, the price of  
5 beer sold to the wholesaler or terms of sale offered to  
6 wholesalers, unless the difference among its wholesalers is  
7 based on reasonable grounds.

8 h. Fail to provide each wholesaler of the brewer's brand  
9 with a written agreement which contains in total the brewer's  
10 agreement with each wholesaler, and designates a specific  
11 exclusive sales territory. The terms of written agreements  
12 executed, amended, or renewed after the effective date of this  
13 Act, shall be consistent with this chapter, and this chapter  
14 may be incorporated by reference in the agreement.

15 i. Enter into an additional agreement with any other  
16 wholesaler for, or to sell to any other wholesaler, the same  
17 brand of beer or brand extension in the same territory or any  
18 portion of the territory, or to sell directly to any retailer  
19 in this state.

20 j. Require a wholesaler to purchase one or more brands of  
21 beer in order for the wholesaler to purchase another brand of  
22 beer for any reason.

23 k. Require a wholesaler, by any means, directly to  
24 participate in or contribute to any local or national  
25 advertising fund controlled directly or indirectly by a  
26 brewer.

27 l. Require by a provision of an agreement or other  
28 instrument in connection with the agreement that any dispute  
29 arising out of or in connection with the agreement be  
30 determined through the application of any other state's laws,  
31 be determined in federal court sitting in a state other than  
32 Iowa, or be determined in a state court of a state other than  
33 this state. A provision contained in any agreement or other  
34 instrument in connection with the agreement which contravenes  
35 this section shall be null and void.

1 2. A wholesaler who, pursuant to an agreement, is granted  
2 a sales territory for which the wholesaler is primarily  
3 responsible or in which the wholesaler is required to  
4 concentrate the wholesaler's efforts, shall not make any sale  
5 or delivery of beer to any retail licensee whose place of  
6 business is not within the territory granted to the wholesaler  
7 unless agreed upon by all affected parties.

8 Sec. 6. NEW SECTION. 123A.6 TRANSFER OF BUSINESS ASSETS  
9 OR STOCK.

10 1. A brewer shall not unreasonably withhold or delay its  
11 approval of any assignment, sale, or transfer of the stock or  
12 other indicia of ownership of a wholesaler or all or any  
13 portion of a wholesaler's assets, wholesaler's voting stock,  
14 the voting stock of any parent corporation, or the beneficial  
15 ownership or control of any other entity owning or controlling  
16 the wholesaler, including the wholesaler's rights and  
17 obligations under the terms of an agreement when the person to  
18 be substituted meets reasonable standards. Upon the death of  
19 one of the partners of a partnership operating the business of  
20 a wholesaler, a brewer shall not deny the surviving partner of  
21 the partnership the right to become a successor-in-interest to  
22 the agreement between the brewer and the partnership, if the  
23 survivor has been active in the management of the partnership  
24 and is otherwise capable of carrying on the business of the  
25 partnership.

26 2. Notwithstanding subsection 1, upon the death of a  
27 wholesaler, a brewer shall not deny approval for any transfer  
28 of ownership or management to a designated member, including  
29 the rights under the agreement with the brewer. The transfer  
30 or assignment shall not be effective until written notice is  
31 given to the brewer, but the brewer's consent to the transfer  
32 or assignment shall not be required.

33 Sec. 7. NEW SECTION. 123A.7 REASONABLE COMPENSATION.

34 1. A brewer who cancels, fails to renew, or terminates  
35 any agreement, or unlawfully denies approval of, or

1 unreasonably withholds consent to any assignment, transfer, or  
2 sale of a wholesaler's business assets or voting stock or  
3 other equity securities, except as provided in this chapter,  
4 shall pay the wholesaler with which the brewer has an  
5 agreement pursuant to this chapter, reasonable compensation  
6 for the fair market value of the wholesaler's business with  
7 relation to the affected brand of beer. The fair market value  
8 of the wholesaler's business shall include, but not be limited  
9 to, its goodwill, if any.

10 2. If a brewer and a wholesaler are unable to mutually  
11 agree on the reasonable compensation to be paid for the value  
12 of the wholesaler's business, either party may maintain a  
13 civil action as provided in section 123A.9, or the matter may,  
14 by mutual agreement of the parties, be submitted to a three-  
15 member arbitration panel consisting of one representative  
16 selected by the brewer but unassociated with the brewer; one  
17 representative selected by the wholesaler but unassociated  
18 with the wholesaler; and an impartial arbitrator selected by  
19 the other two members from a list provided by the American  
20 arbitration association, and the claim settled in accordance  
21 with the rules provided by the American arbitration  
22 association. Arbitration costs shall be paid one-half by the  
23 wholesaler and one-half by the brewer. Arbitration shall be  
24 conducted in accordance with the commercial arbitration rules  
25 of the American arbitration association and the laws of this  
26 state, and judgment upon the award rendered by the arbitrator  
27 may be entered in any court having jurisdiction. The award of  
28 the arbitrator shall be final and binding on the parties.

29 Sec. 8. NEW SECTION. 123A.8 RIGHT OF FREE ASSOCIATION.

30 A brewer or wholesaler shall not restrict or inhibit,  
31 directly or indirectly, the right of free association among  
32 brewers or wholesalers for any lawful purpose.

33 Sec. 9. NEW SECTION. 123A.9 JUDICIAL REMEDIES.

34 1. If a brewer or a wholesaler who is a party to an  
35 agreement pursuant to this chapter fails to comply with this



1 chapter or otherwise engages in conduct prohibited under this  
2 chapter, the aggrieved party may maintain a civil action in  
3 district court if the cause of action directly relates to or  
4 stems from the relationship of the individual parties under  
5 the agreement.

6 2. A brewer or wholesaler may bring an action for  
7 declaratory judgment for determination of any controversy  
8 arising under this chapter or out of the brewer and wholesaler  
9 agreement.

10 3. Upon proper petition to the district court, a brewer or  
11 wholesaler may obtain injunctive relief against a violation of  
12 this chapter.

13 4. In an action under subsection 1, the district court may  
14 grant the relief as the court determines is necessary or  
15 appropriate considering the purposes of this chapter. The  
16 district court may, if it finds that a brewer has acted in bad  
17 faith in invoking the amendment, modification, cancellation,  
18 or termination provision of the agreement between the brewer  
19 and wholesaler, or has unreasonably withheld its consent to  
20 any assignment, transfer, or sale of the wholesaler's  
21 business, award punitive damages, other equitable relief, as  
22 well as actual damages, court costs, and attorney's fees.

23 5. The prevailing party in an action under subsection 1  
24 shall be entitled to actual damages, court costs, and  
25 attorney's fees at the court's discretion.

26 6. With respect to a dispute arising under this chapter or  
27 out of the agreement between a brewer and wholesaler, the  
28 wholesaler and brewer each has the absolute right, before the  
29 wholesaler or brewer has agreed to arbitrate a particular  
30 dispute, to refuse to arbitrate that particular dispute. A  
31 brewer shall not, as a condition of entering into or renewing  
32 an agreement, require the wholesaler to agree to arbitration  
33 in lieu of judicial remedies.

34 7. A brewer shall not take retaliatory action against a  
35 wholesaler who files or manifests an intention to file a

1 complaint of alleged violation of state or federal law or  
2 regulation by the brewer with the appropriate state or federal  
3 regulatory authority. Retaliatory action shall include, but  
4 shall not be limited to, refusal without good cause to  
5 continue the agreement, or a material reduction in the quality  
6 of service or quantity of products available to the wholesaler  
7 under the agreement, or impede the normal business operations  
8 of the wholesaler.

9 Sec. 10. NEW SECTION. 123A.10 WAIVER -- PROHIBITED.

10 A brewer shall not require a wholesaler to waive compliance  
11 with any provision of this chapter. This chapter shall not be  
12 construed to limit or prohibit a good faith settlement of a  
13 dispute voluntarily entered into between the parties.

14 Sec. 11. NEW SECTION. 123A.11 INDEMNIFICATION.

15 A brewer shall fully indemnify and hold harmless the  
16 brewer's wholesaler against any losses, including, but not  
17 limited to, court costs and reasonable attorney's fees or  
18 damages arising out of complaints, claims, or lawsuits,  
19 including, but not limited to, strict liability, negligence,  
20 misrepresentation, or express or implied warranty where the  
21 complaint, claim, or lawsuit relates to the manufacture or  
22 packaging of beer or other functions by the brewer which are  
23 beyond the control of the wholesaler.

24 Sec. 12. NEW SECTION. 123A.12 APPLICATION TO EXISTING  
25 AGREEMENTS.

26 1. The provisions of this chapter apply to a valid  
27 agreement in effect immediately before the effective date of  
28 this Act when the first of the following dates occurs:

29 a. On the effective date of the next amendment,  
30 modification, or renewal of the existing valid agreement.

31 b. On the next anniversary date of the execution of the  
32 original agreement between the wholesaler and the brewer.

33 2. If no written agreement exists, the provisions of the  
34 chapter apply to the implied or oral unwritten agreement of a  
35 brewer and a wholesaler of that brewery on the effective date

1 of this Act.

2

EXPLANATION

3 This bill provides for the regulation of business relations  
4 between beer brewers and beer wholesalers. The conditions are  
5 listed under which an agreement between a brewer and the  
6 brewer's wholesaler may be terminated or canceled. The bill  
7 also lists prohibited conduct for brewers and wholesalers and  
8 provides for the transfer of business interests upon the death  
9 of a business partner and under certain other conditions.

10 The bill also establishes judicial remedies for breaches of  
11 the agreements and prohibits retaliatory actions against a  
12 brewer or a wholesaler. A brewer is prohibited from a number  
13 of actions such as: requiring unreasonable conditions which  
14 prohibit a wholesaler from selling the product of another  
15 brewer; fixing a retail price or changing a wholesale price  
16 after the product is ordered; requiring the acceptance of  
17 delivery of a product which was not ordered; requiring the  
18 electronic transfer of payments for certain products without  
19 the wholesaler's concurrence; or discriminating in business  
20 dealings among wholesalers without reasonable grounds. A  
21 wholesaler is prohibited from selling beer outside the  
22 assigned territory without permission.

23 The bill also provides for the compensation of a wholesaler  
24 if a brewer cancels or fails to renew an agreement or  
25 unlawfully denies approval of, or unreasonably withholds  
26 consent to any sale or assignment of a wholesaler's business  
27 assets. The wholesaler is entitled to the fair market value  
28 of the business. If agreement is not reached as to the price,  
29 a civil action may be filed or an arbitration panel may be  
30 used.

31 This bill applies to existing written agreements on the  
32 effective date of the next amendment, modification, or renewal  
33 of the agreement, or on the next anniversary of a valid  
34 agreement between a brewer and a wholesaler, whichever date is  
35 first, and to unwritten agreements on the effective date of

1 the bill.

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SENATE FILE 207

AN ACT

RELATING TO THE DISTRIBUTION AND SALE OF BEER, PROVIDING FOR THE REGULATION OF BREWER AND WHOLESALER AGREEMENTS, PROHIBITING CERTAIN CONDUCT, PROVIDING FOR THE TRANSFER OF BUSINESS ASSETS, PROVIDING JUDICIAL REMEDIES, SPECIFYING APPLICABILITY, AND PROVIDING FOR OTHER PROPERLY RELATED MATTERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 123A.1 PURPOSES AND SCOPE.

This chapter is enacted pursuant to the authority of the state under the provisions of the twenty-first amendment to the Constitution of the United States to promote the public's interest in fair, efficient, and competitive distribution of beer products through regulation and encouragement of brewer and wholesaler vendors to conduct their business relations toward these ends by:

1. Assuring that the beer wholesaler is free to manage its business enterprise.
2. Assuring the brewer and the public of service from wholesalers who will devote reasonable efforts and resources to distribution and sales of all of the brewer's products which the wholesaler has been granted the right to sell and distribute and maintain satisfactory sales levels.
3. Promoting and maintaining a sound, stable, and viable three-tier system of distribution of beer to the public.

Sec. 2. NEW SECTION. 123A.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Affected party" means a wholesaler, brewer, master distributor, successor brewer, or any person that is a party to an agreement.

2. "Agreement" means a contract or arrangement whether expressed or implied, oral or written, for a definite or indefinite period between a brewer and a wholesaler pursuant to which a wholesaler has been granted the right to purchase, resell, and distribute one or more brands of beer offered by a brewer, or a contract or arrangement in which a brewer grants to a wholesaler a license to use a trade name, trademark, service mark, or related characteristic and in which there is a community of interest in the marketing of the products of the brewer. An agreement exists when one or more of the following occur:

- a. A brewer has shipped beer to a wholesaler or accepted an order for beer from a wholesaler.
  - b. A brewer purchases the right to manufacture a beer product, the right to use the trade name for the product, or the right to distribute a product from another brewer with whom the wholesaler has an agreement.
3. "Beer" means any liquid capable of being used for beverage purposes made by the fermentation of an infusion in potable water of barley, malt, and hops with or without unmalted grains or decorticated and degerminated grains, or made by the fermentation of, or by distillation of the fermented products of fruit, fruit extracts, or other agricultural products, containing more than one-half of one percent of alcohol by volume but not more than five percent of alcohol by weight but not including mixed drinks or cocktails mixed on the premises.

4. "Brand" means a word, name, group of letters, symbol, or a combination of words, names, letters, or symbols adopted and used by a brewer to identify a specific beer product, and to distinguish that beer product from other beer products brewed or marketed by that brewery or other breweries.

5. "Brand extension" means a brand which incorporates all or a substantial part of the unique features of a preexisting brand of the same brewery and which relies to a significant extent on the goodwill associated with the preexisting brand.

However, a general corporate logo or symbol or an advertising message, whether appearing on the product packaging or elsewhere, is not a brand, brand extension, or part of a brand or brand extension.

6. "Brewer" means a person who is engaged in the manufacture of beer for the purpose of sale, barter, exchange, or transportation, a master distributor, or a fermenter, processor, bottler, packager, or importer of beer, or a successor brewer.

7. "Designated member" means a deceased wholesaler's spouse, child, grandchild, parent, brother, or sister, who is entitled to inherit the deceased wholesaler's ownership interest under the terms of the deceased wholesaler's will, other testamentary device, or the laws of intestate succession. With respect to an incapacitated individual having an ownership interest in a wholesaler, "designated member" also means a person appointed by the court as the conservator of the individual's property. "Designated member" also includes the appointed and qualified personal representative and the testamentary trustee of a deceased wholesaler.

8. "Good cause" exists if the wholesaler or affected party has failed to comply with reasonable requirements which are imposed upon the wholesaler or affected party through an agreement, which do not discriminate either by their terms or in the methods of their enforcement as compared with requirements imposed on other similarly situated wholesalers by the brewer, and which are not in violation of any law or administrative rule.

9. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade and defined and interpreted under section 554.2103.

10. "Manager" means an individual named or designated by agreement between the brewer and wholesaler, who is principally responsible for the daily management of the wholesaler.

11. "Master distributor" means a wholesaler who acts in the role of or in a similar capacity as a brewer or outside seller of one or more brands of beer to other wholesalers on a regular basis in the normal course of business.

12. "Reasonable standards and qualifications" means those criteria applied by the brewer to similarly situated wholesalers during a period of twenty-four months before a proposed change in a successor manager of the wholesaler's business.

13. "Similarly situated wholesalers" means wholesalers of a brewer that are of a generally comparable size, and operate in markets with similar demographic characteristics, including population size, density, distribution, and vital statistics, and reasonably similar economic and geographic conditions.

14. "Successor brewer" means a person who succeeds to the role of a brewer or master distributor to manufacture or distribute one or more brands of beer whether by merger, purchase of corporate shares, purchase of assets, or any other arrangement.

15. "Successor manager" means an individual named or designated by agreement between a brewer and wholesaler who succeeds to the role of manager who will be principally responsible for the daily management of the wholesaler.

16. "Territory" means the geographic area of primary sales responsibility designated by an agreement between a wholesaler and brewer for one or more brands of beer of the brewer.

17. "Wholesaler" means a person, other than a vintner, brewer, or bottler of beer, who sells, barter, exchanges, offers for sale, possesses with intent to sell, deals, or traffics in beer.

Sec. 3. NEW SECTION. 123A.3 TERMINATION AND NOTICE OF CANCELLATION.

1. Except as provided in subsection 5, a brewer or wholesaler shall not amend, modify, cancel, fail to renew, or otherwise terminate an agreement unless the brewer or wholesaler furnishes prior notification to the other party in accordance with subsection 3.

2. The notification required under subsection 1 shall be in writing and sent to the affected party by certified mail not less than ninety days before the date on which the agreement will be amended, modified, canceled, not renewed, or otherwise terminated. The notification shall contain all of the following:

a. A statement of intention to amend, modify, cancel, fail to renew, or otherwise terminate the agreement.

b. A statement enumerating the facts and reasons for the action, including documentation necessary to fully inform the wholesaler of the reasons for the action.

c. The date on which the action will take effect.

3. For each cancellation, nonrenewal, or termination, the brewer shall have the burden of showing that it has acted in good faith, that the notice requirements under this section have been complied with, and that there was good cause for the cancellation, nonrenewal, or termination.

4. Notwithstanding the terms or conditions of any agreement, good cause exists for the purpose of a cancellation, nonrenewal, or termination if all of the following occur:

a. The wholesaler fails to comply with a provision of the agreement which is both reasonable and of material significance to the business relationship between the wholesaler and the brewer.

b. The brewer first acquired knowledge of the failure described in paragraph "a" not more than twenty-four months before the date notification was given pursuant to subsection 3.

c. The wholesaler was given notice by the brewer of failure to comply with the agreement.

d. The wholesaler has been given thirty days in which to submit a plan of corrective action to comply with the agreement and an additional ninety days to cure the noncompliance in accordance with the plan, and has failed to correct the failure to comply with the provisions of the agreement.

5. A brewer may cancel, fail to renew, or otherwise terminate an agreement without furnishing any prior notification and without good cause as required in subsection 4 for any of the following reasons:

a. The wholesaler's failure to pay any account when due and upon written demand by the brewer for the payment, in accordance with agreed upon payment terms.

b. The wholesaler's assignment for the benefit of creditors, or similar disposition, of substantially all of the assets of the party's business.

c. The insolvency of the wholesaler, or the institution of proceedings in bankruptcy by or against the wholesaler.

d. The dissolution or liquidation of the wholesaler.

e. The wholesaler's conviction of, or plea of guilty or no contest, to a charge of violating a law or rule in this state which materially and adversely affects the ability of either party to continue to sell beer in this state, or the revocation or suspension of a license or permit to sell beer in this state for a period greater than thirty-one days.

f. Any attempted transfer of business assets of the wholesaler, ten percent or more of the voting stock of the wholesaler or the voting stock of any parent corporation of the wholesaler, or any change in the beneficial ownership or control of any wholesaler without obtaining the prior consent or approval as provided for under section 123A.6.

g. The wholesaler's fraudulent conduct relating to a material matter on the part of the wholesaler in dealings with the brewer or its product. However, the brewer shall have the burden of proving fraudulent conduct relating to a material matter on the part of the wholesaler in any legal action challenging the termination.

h. The wholesaler distributes, sells, or delivers beer to a retailer whose premises are situated outside the geographic territory agreed upon by the wholesaler and the brewer as the area in which the wholesaler will sell beer purchased from the brewer, without the consent of the brewer and the distributor who has been assigned the territory by the brewer.

2. The notification required under subsection 1 shall be in writing and sent to the affected party by certified mail not less than ninety days before the date on which the agreement will be amended, modified, canceled, not renewed, or otherwise terminated. The notification shall contain all of the following:

a. A statement of intention to amend, modify, cancel, fail to renew, or otherwise terminate the agreement.

b. A statement enumerating the facts and reasons for the action, including documentation necessary to fully inform the wholesaler of the reasons for the action.

c. The date on which the action will take effect.

3. For each cancellation, nonrenewal, or termination, the brewer shall have the burden of showing that it has acted in good faith, that the notice requirements under this section have been complied with, and that there was good cause for the cancellation, nonrenewal, or termination.

4. Notwithstanding the terms or conditions of any agreement, good cause exists for the purpose of a cancellation, nonrenewal, or termination if all of the following occur:

a. The wholesaler fails to comply with a provision of the agreement which is both reasonable and of material significance to the business relationship between the wholesaler and the brewer.

b. The brewer first acquired knowledge of the failure described in paragraph "a" not more than twenty-four months before the date notification was given pursuant to subsection 3.

c. The wholesaler was given notice by the brewer of failure to comply with the agreement.

d. The wholesaler has been given thirty days in which to submit a plan of corrective action to comply with the agreement and an additional ninety days to cure the noncompliance in accordance with the plan, and has failed to correct the failure to comply with the provisions of the agreement.

5. A brewer may cancel, fail to renew, or otherwise terminate an agreement without furnishing any prior notification and without good cause as required in subsection 4 for any of the following reasons:

a. The wholesaler's failure to pay any account when due and upon written demand by the brewer for the payment, in accordance with agreed upon payment terms.

b. The wholesaler's assignment for the benefit of creditors, or similar disposition, of substantially all of the assets of the party's business.

c. The insolvency of the wholesaler, or the institution of proceedings in bankruptcy by or against the wholesaler.

d. The dissolution or liquidation of the wholesaler.

e. The wholesaler's conviction of, or plea of guilty or no contest, to a charge of violating a law or rule in this state which materially and adversely affects the ability of either party to continue to sell beer in this state, or the revocation or suspension of a license or permit to sell beer in this state for a period greater than thirty-one days.

f. Any attempted transfer of business assets of the wholesaler, ten percent or more of the voting stock of the wholesaler or the voting stock of any parent corporation of the wholesaler, or any change in the beneficial ownership or control of any wholesaler without obtaining the prior consent or approval as provided for under section 123A.6.

g. The wholesaler's fraudulent conduct relating to a material matter on the part of the wholesaler in dealings with the brewer or its product. However, the brewer shall have the burden of proving fraudulent conduct relating to a material matter on the part of the wholesaler in any legal action challenging the termination.

h. The wholesaler distributes, sells, or delivers beer to a retailer whose premises are situated outside the geographic territory agreed upon by the wholesaler and the brewer as the area in which the wholesaler will sell beer purchased from the brewer, without the consent of the brewer and the distributor who has been assigned the territory by the brewer.



Sec. 4. NEW SECTION. 123A.4 CANCELLATION.

A brewer or a wholesaler shall not cancel, fail to renew, or otherwise terminate an agreement unless the party intending that action has good cause for the cancellation, failure to renew, or termination, has made good faith efforts to resolve disagreements, and, in any case in which prior notification is required under section 123A.3, the party intending to act has furnished the prior notification and the other party has not eliminated the reasons specified in the notification for cancellation, failure to renew, or termination, within the periods provided in section 123A.3, subsection 4, paragraph "d".

Sec. 5. NEW SECTION. 123A.5 PROHIBITED CONDUCT.

1. A brewer shall not commit any of the following actions:
  - a. Induce or coerce, or attempt to induce or coerce, any wholesaler to engage in any illegal act or course of conduct.
  - b. Require a wholesaler to assent to any unreasonable requirement, condition, understanding, or term of an agreement prohibiting a wholesaler from selling the product of another brewer.
  - c. Fix, maintain, or establish the price at which a wholesaler may resell beer, or to change, by any means, the price charged to the wholesaler after beer has been ordered by the wholesaler from the brewer.
  - d. Require any wholesaler to accept delivery of any beer or any other item or commodity which shall not have been ordered by the wholesaler.
  - e. Require a wholesaler without the wholesaler's approval to participate in an arrangement for the payment or crediting by an electronic fund transfer transaction for any item or commodity other than beer, or to access a wholesaler's account for any item or commodity other than beer.
  - f. Require or prohibit any change in the manager or successor manager of any wholesaler who has been approved by the brewer as of or subsequent to the effective date of this Act unless the brewer acts in good faith. If a wholesaler

changes an approved manager or successor manager, a brewer shall not require or prohibit the change unless the person selected by the wholesaler fails to meet the nondiscriminatory, material, and reasonable standards and qualifications for managers or successor managers consistently applied to similarly situated wholesalers by the brewer. However, the brewer shall have the burden of proving that the person fails to meet the reasonable standards and qualifications.

g. Discriminate among the brewer's wholesalers in any business dealings including, but not limited to, the price of beer sold to the wholesaler or terms of sale offered to wholesalers, unless the difference among its wholesalers is based on reasonable grounds.

h. Fail to provide each wholesaler of the brewer's brand with a written agreement which contains in total the brewer's agreement with each wholesaler, and designates a specific exclusive sales territory. The terms of written agreements executed, amended, or renewed after the effective date of this Act, shall be consistent with this chapter, and this chapter may be incorporated by reference in the agreement.

i. Enter into an additional agreement with any other wholesaler for, or to sell to any other wholesaler, the same brand of beer or brand extension in the same territory or any portion of the territory, or to sell directly to any retailer in this state.

j. Require a wholesaler to purchase one or more brands of beer in order for the wholesaler to purchase another brand of beer for any reason.

k. Require a wholesaler, by any means, directly to participate in or contribute to any local or national advertising fund controlled directly or indirectly by a brewer.

l. Require by a provision of an agreement or other instrument in connection with the agreement that any dispute arising out of or in connection with the agreement be

determined through the application of any other state's laws, be determined in federal court sitting in a state other than Iowa, or be determined in a state court of a state other than this state. A provision contained in any agreement or other instrument in connection with the agreement which contravenes this section shall be null and void.

2. A wholesaler who, pursuant to an agreement, is granted a sales territory for which the wholesaler is primarily responsible or in which the wholesaler is required to concentrate the wholesaler's efforts, shall not make any sale or delivery of beer to any retail licensee whose place of business is not within the territory granted to the wholesaler unless agreed upon by all affected parties.

Sec. 6. NEW SECTION. 123A.6 TRANSFER OF BUSINESS ASSETS OR STOCK.

1. A brewer shall not unreasonably withhold or delay its approval of any assignment, sale, or transfer of the stock or other indicia of ownership of a wholesaler or all or any portion of a wholesaler's assets, wholesaler's voting stock, the voting stock of any parent corporation, or the beneficial ownership or control of any other entity owning or controlling the wholesaler, including the wholesaler's rights and obligations under the terms of an agreement when the person to be substituted meets reasonable standards. Upon the death of one of the partners of a partnership operating the business of a wholesaler, a brewer shall not deny the surviving partner of the partnership the right to become a successor-in-interest to the agreement between the brewer and the partnership, if the survivor has been active in the management of the partnership and is otherwise capable of carrying on the business of the partnership.

2. Notwithstanding subsection 1, upon the death of a wholesaler, a brewer shall not deny approval for any transfer of ownership or management to a designated member, including the rights under the agreement with the brewer. The transfer or assignment shall not be effective until written notice is

given to the brewer, but the brewer's consent to the transfer or assignment shall not be required.

Sec. 7. NEW SECTION. 123A.7 REASONABLE COMPENSATION.

1. A brewer who cancels, fails to renew, or terminates any agreement, or unlawfully denies approval of, or unreasonably withholds consent to any assignment, transfer, or sale of a wholesaler's business assets or voting stock or other equity securities, except as provided in this chapter, shall pay the wholesaler with which the brewer has an agreement pursuant to this chapter, reasonable compensation for the fair market value of the wholesaler's business with relation to the affected brand of beer. The fair market value of the wholesaler's business shall include, but not be limited to, its goodwill, if any.

2. If a brewer and a wholesaler are unable to mutually agree on the reasonable compensation to be paid for the value of the wholesaler's business, either party may maintain a civil action as provided in section 123A.9, or the matter may, by mutual agreement of the parties, be submitted to a three-member arbitration panel consisting of one representative selected by the brewer but unassociated with the brewer; one representative selected by the wholesaler but unassociated with the wholesaler; and an impartial arbitrator selected by the other two members from a list provided by the American arbitration association, and the claim settled in accordance with the rules provided by the American arbitration association. Arbitration costs shall be paid one-half by the wholesaler and one-half by the brewer. Arbitration shall be conducted in accordance with the commercial arbitration rules of the American arbitration association and the laws of this state, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The award of the arbitrator shall be final and binding on the parties.

Sec. 8. NEW SECTION. 123A.8 RIGHT OF FREE ASSOCIATION.

A brewer or wholesaler shall not restrict or inhibit, directly or indirectly, the right of free association among brewers or wholesalers for any lawful purpose.

Sec. 9. NEW SECTION. 123A.9 JUDICIAL REMEDIES.

1. If a brewer or a wholesaler who is a party to an agreement pursuant to this chapter fails to comply with this chapter or otherwise engages in conduct prohibited under this chapter, the aggrieved party may maintain a civil action in district court if the cause of action directly relates to or stems from the relationship of the individual parties under the agreement.

2. A brewer or wholesaler may bring an action for declaratory judgment for determination of any controversy arising under this chapter or out of the brewer and wholesaler agreement.

3. Upon proper petition to the district court, a brewer or wholesaler may obtain injunctive relief against a violation of this chapter.

4. In an action under subsection 1, the district court may grant the relief as the court determines is necessary or appropriate considering the purposes of this chapter. The district court may, if it finds that a brewer has acted in bad faith in invoking the amendment, modification, cancellation, nonrenewal, or termination provision of the agreement between the brewer and wholesaler, or has unreasonably withheld its consent to any assignment, transfer, or sale of the wholesaler's business, award equitable relief, actual damages, court costs, and attorney's fees.

5. The prevailing party in an action under subsection 1 shall be entitled to actual damages, court costs, and attorney's fees at the court's discretion.

6. With respect to a dispute arising under this chapter or out of the agreement between a brewer and wholesaler, the wholesaler and brewer each has the absolute right, before the wholesaler or brewer has agreed to arbitrate a particular dispute, to refuse to arbitrate that particular dispute. A brewer shall not, as a condition of entering into or renewing an agreement, require the wholesaler to agree to arbitration in lieu of judicial remedies.

7. A brewer shall not take retaliatory action against a wholesaler who files or manifests an intention to file a complaint of alleged violation of state or federal law or regulation by the brewer with the appropriate state or federal regulatory authority. Retaliatory action shall include, but shall not be limited to, refusal without good cause to continue the agreement, or a material reduction in the quality of service or quantity of products available to the wholesaler under the agreement, or impede the normal business operations of the wholesaler.

Sec. 10. NEW SECTION. 123A.10 WAIVER -- PROHIBITED.

A brewer shall not require a wholesaler to waive compliance with any provision of this chapter. This chapter shall not be construed to limit or prohibit a good faith settlement of a dispute voluntarily entered into between the parties.

Sec. 11. NEW SECTION. 123A.11 INDEMNIFICATION.

A brewer shall fully indemnify and hold harmless the brewer's wholesaler against any losses, including, but not limited to, court costs and reasonable attorney's fees or damages arising out of complaints, claims, or lawsuits, including, but not limited to, strict liability, negligence, misrepresentation, or express or implied warranty where the complaint, claim, or lawsuit relates to the manufacture or packaging of beer or other functions by the brewer which are beyond the control of the wholesaler.

Sec. 12. NEW SECTION. 123A.12 APPLICATION TO EXISTING AGREEMENTS.

1. The provisions of this chapter apply to a valid agreement in effect immediately before the effective date of this Act when the first of the following dates occurs:

- a. On the effective date of the next amendment, modification, or renewal of the existing valid agreement.
- b. On the next anniversary date of the execution of the original agreement between the wholesaler and the brewer.

2. If no written agreement exists, the provisions of the chapter apply to the implied or oral unwritten agreement of a

brewer and a wholesaler of that brewery on the effective date of this Act.

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LEONARD L. BOSWELL  
President of the Senate

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RON J. CORBETT  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 207, Seventy-sixth General Assembly.

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JOHN F. DWYER  
Secretary of the Senate

Approved April 26, 1995

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TERRY E. BRANSTAD  
Governor