

State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

921V0449

SENATE BILL NO. 92

Introduced by: Senator Maher and Representative Rounds

1 FOR AN ACT ENTITLED, An Act to require nondiscriminatory pricing between malt beverage
2 suppliers and malt beverage wholesalers.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 35-8A-4 be amended to read as follows:

5 35-8A-4. No supplier may:

- 6 (1) Induce or coerce, or attempt to induce or coerce, a wholesaler to do any illegal act by
7 threatening to amend, cancel, terminate, or refuse to renew any agreement existing
8 between the supplier and wholesaler, or by any other means;
- 9 (2) Require a wholesaler by any means to participate in or contribute to any local or
10 national advertising fund controlled directly or indirectly by a supplier, unless the
11 cost is allocated fairly to each wholesaler in that market area according to sales to the
12 wholesalers;
- 13 (3) Withhold delivery of malt beverages ordered by a wholesaler or change a
14 wholesaler's quota of a brand or brands if the action is not made in good faith;
- 15 (4) Require a wholesaler to accept delivery of any malt beverages or other item or



1 commodity which was not ordered by the wholesaler or which was ordered but
2 properly cancelled by the wholesaler in accordance with the procedures previously
3 established by the supplier. However, a supplier may impose reasonable inventory
4 requirements upon a wholesaler if the requirements are made in good faith and are
5 generally applied to other similarly situated wholesalers of the supplier;

6 (5) Require a wholesaler to purchase one or more brands of malt beverages in order for
7 the wholesaler to purchase another brand or brands of malt beverage for any reason;

8 (6) Prohibit a wholesaler from dealing in any product not supplied by the supplier,
9 including any product of any other supplier of any other alcoholic beverage or any
10 nonalcoholic product, or in any way attempt to regulate or control ancillary
11 businesses of a wholesaler;

12 (7) Fix or maintain the price at which a wholesaler may resell malt beverages;

13 (8) Take any action not in good faith against a wholesaler for or because of the filing of
14 a complaint regarding an alleged violation by the supplier of any state or federal law
15 or administrative rule;

16 (9) Refuse to approve any proposed manager or successor manager without good cause
17 or require or prohibit any change in the manager or successor manager of a
18 wholesaler who has been previously approved by the supplier without good cause.

19 For purposes of this subdivision, good cause is the failure of a manager or successor
20 manager to meet commercially reasonable standards or to perform commercially
21 reasonable duties as specified in an agreement between the supplier and wholesaler;

22 **or**

23 (10) Withdraw from or discontinue supplying to a wholesaler one or more brands or
24 packages of malt beverages. However, nothing in this subdivision prohibits a supplier

1 from withdrawing or discontinuing any brand or package on a state-wide or on a
2 media coverage area basis at any time on reasonable notice or conducting test
3 marketing of a new brand or of a brand of beer which is not currently being sold in
4 this state; or

5 (11) Discriminate among wholesalers in the net price of malt beverages sold to any
6 wholesaler or in any price promotion offered the wholesaler. The net price shall be
7 determined freight on board point of origin and shall include any discount, rebate,
8 credit, or other allowance that effectively reduces the price.