

1 SB278  
2 148640-2  
3 By Senator Blackwell  
4 RFD: Business and Labor  
5 First Read: 28-FEB-13

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: Under existing law, certain acts of beer  
9 suppliers are prohibited with respect to their  
10 dealings with wholesalers.

11 This bill would provide additional  
12 prohibited acts of beer suppliers with respect to  
13 their dealings with wholesalers.

14 This bill would provide fines and sanctions  
15 for a violation of any prohibited act.

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT  
20

21 To amend Section 28-9-4, Code of Alabama 1975,  
22 relating to prohibited acts by beer suppliers; to provide for  
23 a uniform freight on board (FOB) price; to eliminate reaching  
24 back or attempting to reach back to collect a different sale  
25 price of beer sold by a beer supplier to a wholesaler; to  
26 prohibit discrimination in price, allowance, rebate, refund,  
27 commission, discount, or service between wholesalers licensed

1 in Alabama; to clarify the provision relating to requests for  
2 audited profit and loss statements, balance sheets, or  
3 financial records; and to provide fines and other sanctions  
4 for a violation of any prohibited act.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Section 28-9-4 of the Code of Alabama  
7 1975, is amended to read as follows:

8 "§28-9-4.

9 "(a) A supplier is prohibited from doing the  
10 following:

11 "(1) Fail to provide each wholesaler of the  
12 supplier's brand or brands with a written agreement which  
13 contains in total the supplier's agreement with each  
14 wholesaler, and designates a specific exclusive sales  
15 territory. Any agreement which is in existence on March 3,  
16 1988, shall be renewed consistent with this chapter; provided,  
17 that this chapter may be incorporated by reference in the  
18 agreement. Provided, however, nothing contained herein shall  
19 prevent a supplier from appointing, one time for a period not  
20 to exceed 90 days, a wholesaler to temporarily service a sales  
21 territory not designated to another wholesaler, until such  
22 time as a wholesaler is appointed by the supplier; and such  
23 wholesaler who is designated to service the sales territory  
24 during this period of temporary service shall not be in  
25 violation of the chapter, and, with respect to the temporary  
26 service territory, shall not have any of the rights provided  
27 under Sections 28-9-6 and 28-9-8.

1           "(2) Fix, maintain, or establish the price at which  
2 a wholesaler shall sell any beer.

3           "(3) Discriminate in price, allowance, rebate,  
4 refund, commission, discount, or service between wholesalers  
5 licensed in Alabama. Discriminate shall exclude the granting  
6 of more favorable freight and transportation costs, price  
7 promotions on beer for special events in a particular market  
8 not to exceed five consecutive days, point-of-sale advertising  
9 materials, sponsorships, consumer specialty items, consumer  
10 sweepstakes, and novelties.

11           "(4) Change the price of beer as originally quoted  
12 or billed to a wholesaler by the supplier regardless of the  
13 price at which a wholesaler shall sell any beer.

14           "(5) Reach back or attempt to reach back to collect  
15 from a wholesaler a price for beer different from that posted  
16 by a supplier, or quoted or billed by a supplier to a  
17 wholesaler regardless of the price at which a wholesaler shall  
18 sell any beer to a retailer.

19           "(6) Fail to establish or charge a uniform freight  
20 on board (FOB) delivered price for beer to be sold to all  
21 wholesalers in the State of Alabama, provided the uniform FOB  
22 delivered price shall exclude the actual cost of  
23 transportation or delivery, which actual cost shall be  
24 calculated by a uniform formula and added to the uniform FOB  
25 delivered price for each wholesaler.

26           "(7) Interfere with the right of a wholesaler to  
27 establish its sales price for beer sold to retailers.

1           "~~(3)~~(8) Enter into an additional agreement with any  
2 other wholesaler for, or to sell to any other wholesaler, the  
3 same brand or brands of beer in the same territory or any  
4 portion thereof, or to sell directly to any retailer in this  
5 state.

6           "~~(4)~~(9) Coerce, or attempt to coerce, any wholesaler  
7 to accept delivery of any beer, or other commodity which has  
8 not been ordered by the wholesaler. Provided, however, a  
9 supplier may impose reasonable inventory requirements upon a  
10 wholesaler if the requirements are made in good faith and are  
11 generally applied to other similarly situated wholesalers  
12 having an agreement with the supplier.

13           "~~(5)~~(10) Coerce, or attempt to coerce, any  
14 wholesaler to accept delivery of any beer, or other commodity  
15 ordered by a wholesaler if the order was canceled by the  
16 wholesaler.

17           "~~(6)~~(11) Coerce, or attempt to coerce, any  
18 wholesaler to do any illegal act or to violate any law or  
19 regulation by threatening to amend, modify, cancel, terminate,  
20 or refuse to renew any agreement existing between the supplier  
21 and wholesaler.

22           "~~(7)~~(12) Require a wholesaler to assent to any  
23 condition, stipulation, or provision limiting the wholesaler's  
24 right to sell the brand or brands of beer or other products of  
25 any other supplier unless the acquisition of the brand or  
26 brands or products of another supplier would materially impair  
27 or adversely affect the wholesaler's quality of service, sales

1 or ability to compete effectively in representing the brand or  
2 brands of the supplier presently being sold by the wholesaler;  
3 provided the supplier shall have the burden of proving that  
4 such acquisition of such other brand or brands or products  
5 would have such effect.

6 "~~(8)~~(13) Require a wholesaler to purchase one or  
7 more brands of beer or other products in order for the  
8 wholesaler to purchase another brand or brands of beer for any  
9 reason. Provided, however, a wholesaler that has agreed to  
10 distribute a brand or brands before March 3, 1988, shall  
11 continue to distribute the brand or brands in conformance with  
12 this chapter.

13 "~~(9)~~(14) Request a wholesaler to submit audited  
14 profit and loss statements, balance sheets, or financial  
15 records as a condition of renewal or continuation of an  
16 agreement or otherwise.

17 "~~(10)~~(15) Withhold delivery of beer ordered by a  
18 wholesaler, or change a wholesaler's quota of a brand or  
19 brands if the withholding or change is not made in good faith.

20 "~~(11)~~(16) Require a wholesaler by any means directly  
21 to participate in or contribute to any local or national  
22 advertising/operation fund or defined spending controlled  
23 directly or indirectly by a supplier.

24 "~~(12)~~(17) Take any retaliatory action against a  
25 wholesaler that files a complaint regarding an alleged  
26 violation by the supplier of federal, state or local law or an  
27 administrative rule.

1           "~~(13)~~(18) Require or prohibit, without just and  
2 reasonable cause, any change in the manager or successor  
3 manager of any wholesaler who has been approved by the  
4 supplier as of or subsequent to March 3, 1988. Should a  
5 wholesaler change an approved manager or successor manager, a  
6 supplier shall not require or prohibit the change unless the  
7 person selected by the wholesaler fails to meet the  
8 nondiscriminatory, material and reasonable standards and  
9 qualifications for managers of Alabama wholesalers of the  
10 supplier which standards and qualifications previously have  
11 been consistently applied to Alabama wholesalers by the  
12 supplier. Provided, however, the supplier shall have the  
13 burden of proving that such person fails to meet such  
14 standards and qualifications which are nondiscriminatory,  
15 material and reasonable and have been consistently applied to  
16 Alabama wholesalers.

17           "~~(14)~~(19) Upon written notice of intent to transfer  
18 the wholesaler's business, interfere with, prevent, or  
19 unreasonably delay (not to exceed 30 days) the transfer of the  
20 wholesaler's business if the proposed transferee is a  
21 designated member.

22           "~~(15)~~(20) Upon written notice of intent to transfer  
23 the wholesaler's business other than to a designated member,  
24 withhold consent to or approval of, or unreasonably delay (not  
25 to exceed 30 days after receipt of all material information  
26 reasonably requested) a response to a request by the  
27 wholesaler for, any transfer of a wholesaler's business if the

1 proposed transferee meets the nondiscriminatory, material and  
2 reasonable qualifications and standards required by the  
3 supplier for Alabama wholesalers. Provided, however, the  
4 supplier shall have the burden of proving that the proposed  
5 transferee does not meet such standards and qualifications  
6 which are nondiscriminatory, material and reasonable and have  
7 been consistently applied to Alabama wholesalers.

8 ~~"(16) (21)~~ Restrict or inhibit, directly or  
9 indirectly, the right of free association among wholesalers  
10 for any lawful purpose.

11 "(b) Any violation of any of the prohibited acts by  
12 a supplier shall result in a fine of not less than one hundred  
13 dollars (\$100) nor more than one thousand dollars (\$1,000).  
14 Additionally, any violation of the prohibited acts is grounds  
15 for denial or suspension of the license or other penalties as  
16 determined by the board under Section 28-3A-24."

17 Section 2. The administrator shall promulgate rules  
18 necessary to implement and administer this act.

19 Section 3. This act shall become effective  
20 immediately following its passage and approval by the  
21 Governor, or its otherwise becoming law.