

1 SB347
2 164861-1
3 By Senator Whatley (N & P)
4 RFD: Local Legislation
5 First Read: 07-APR-15

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to Lee County, relating to alcoholic
14 beverages and the sale of wine in Lee County, to create the
15 Lee County Wine Franchise Jobs Protection Act; to provide for
16 business relations between suppliers and wholesalers of wine
17 to preserve and expand jobs in Lee County in the wine
18 industry; to require written agreements setting forth in full
19 the supplier's agreement with the wholesaler, and designating
20 a specific exclusive sales territory; to provide for
21 prohibited acts by the supplier and by the wholesaler; to
22 provide for conditions of amendment, modification,
23 resignation, cancellation, termination, failure to renew, or
24 refusal to continue the agreement; to provide for the transfer
25 of wholesaler's business, for the establishment of
26 nondiscriminatory, material, and reasonable qualifications and
27 standards by suppliers, and prohibit interference with the

1 transfer upon compliance with those standards; to provide for
2 reasonable compensation upon supplier's violation of the act,
3 including a method of voluntary arbitration; to provide for
4 civil actions for violations, damages, and venue; to provide
5 for the burden of proof; to provide that the wholesaler may
6 not waive rights set forth in this act; to provide that the
7 act relates to existing and future agreements with wholesalers
8 and suppliers as well as their successors and transferees; to
9 provide that this act is cumulative; and to provide for an
10 effective date.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. This act shall be known and may be cited
13 as the "Lee County Wine Franchise Jobs Protection Act."

14 Section 2. This act shall be operative only in Lee
15 County.

16 Section 3. The legislative intent and purpose of
17 this act is to provide a structure for the business relations
18 between a wholesaler and a supplier of wine in Lee County.
19 Regulation in this area within the county is considered
20 necessary for the following reasons:

21 (1) To maintain stability and healthy competition in
22 the wine industry in Lee County.

23 (2) To provide and maintain a sound, stable, and
24 viable three-tier system of distribution of wine to the public
25 in Lee County.

26 (3) To promote the public health, safety, and
27 welfare.

1 (4) To preserve and expand jobs in Lee County in the
2 wine industry.

3 Section 4. (a) The following words or phrases, or
4 the plurals thereof, whenever they appear in this act, unless
5 the context clearly requires otherwise, shall have the meaning
6 ascribed to them in this section:

7 (1) AGREEMENT. Any agreement between a wholesaler
8 and a supplier, whether oral or written, whereby a wholesaler
9 is granted the right to purchase and sell a brand or brands of
10 wine sold by a supplier.

11 (2) ANCILLARY BUSINESS. A business owned by a
12 wholesaler, or by a substantial partner of a wholesaler, the
13 primary business of which is directly related to the
14 transporting, storing, or marketing of the brand or brands of
15 wine of a supplier with whom the wholesaler has an agreement;
16 or a business owned by a wholesaler, a substantial stockholder
17 of a wholesaler, or a substantial partner of a wholesaler
18 which recycles empty beverage containers.

19 (3) DESIGNATED MEMBER. The spouse, child,
20 grandchild, parent, brother, or sister of a deceased
21 individual who owned an interest, including a controlling
22 interest, in a wholesaler; or any person who inherits the
23 deceased individual's ownership interest in the wholesaler
24 under the terms of the deceased individual's will, or under
25 the laws of intestate succession of this state; or any person
26 who or entity which has otherwise by designation in writing by
27 the deceased individual, succeeded the deceased individual in

1 the wholesaler's business, or has succeeded to the deceased
2 individual's ownership interest in the wholesaler pursuant to
3 a written contract or instrument; and also includes the
4 appointed and qualified personal representative and the
5 testamentary trustee of a deceased individual owning an
6 ownership interest in a wholesaler. Designated member also
7 includes a person appointed by the court as the guardian or
8 conservator of the property of an incapacitated individual
9 owning an ownership interest in a wholesaler.

10 (4) GOOD FAITH. Honesty in fact and the observance
11 of reasonable commercial standards of fair dealing in the
12 trade, as defined in and interpreted under the Uniform
13 Commercial Code, Section 7-2-103 of the Code of Alabama 1975.

14 (5) REASONABLE QUALIFICATIONS. The standard of the
15 reasonable criteria established and consistently used by the
16 respective supplier for Alabama wholesalers that entered into,
17 continued, or renewed an agreement with the supplier during a
18 period of 24 months prior to the proposed transfer of the
19 wholesaler's business, or for Alabama wholesalers who have
20 changed managers or designated managers during a period of 24
21 months prior to the proposed change in manager or successor
22 manager of the wholesaler's business.

23 (6) RETALIATORY ACTION. Includes, but is not limited
24 to, the refusal to continue an agreement, or a material
25 reduction in the quality of service or in the quantity of
26 products available to a wholesaler under an agreement, which
27 refusal or reduction is not made in good faith.

1 (7) SALES TERRITORY. An area of exclusive sales
2 responsibility for the brand or brands of wine sold by a
3 supplier as designated by an agreement.

4 (8) SUBSTANTIAL STOCKHOLDER or SUBSTANTIAL PARTNER.
5 A stockholder of or partner in the wholesaler who owns an
6 interest of 25 percent or more of the partnership or of the
7 capital stock of a corporate wholesaler.

8 (9) SUPPLIER. A manufacturer or importer of wine
9 licensed by the board.

10 (10) TRANSFER OF WHOLESALER'S BUSINESS. The
11 voluntary sale, assignment, or other transfer of all or
12 control of the business or all or substantially all of the
13 assets of the wholesaler, or all or control of the capital
14 stock of the wholesaler, including without limitation the sale
15 or other transfer of capital stock or assets by merger,
16 consolidation, or dissolution, or of the capital stock of the
17 parent corporation, or of the capital stock or beneficial
18 ownership of any other entity owning or controlling the
19 wholesaler.

20 (11) WHOLESALER. A wholesaler of wine licensed by
21 the board.

22 (b) Other words or phrases used in this act shall
23 have the meanings ascribed to them in Section 28-3-1 of the
24 Code of Alabama 1975, unless the context clearly requires
25 otherwise.

26 Section 5. Each supplier of wine licensed by the
27 board authorizing such licensee to sell its wine within the

1 State of Alabama shall sell its wine through wholesaler
2 licensees of the board and shall grant in writing to each of
3 its wholesalers an exclusive sales territory in accordance
4 with Chapter 8, Title 28 of the Code of Alabama 1975.

5 Section 6. Each supplier of wine licensed by the
6 board authorizing such licensee to sell its wine within the
7 State of Alabama shall sell its wine through wholesaler
8 licensees of the board and shall grant in writing to each of
9 its wholesalers an exclusive sales territory in accordance
10 with Chapter 8, Title 28 of the Code of Alabama 1975.

11 Section 7. A supplier may not do any of the
12 following:

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

1 and, with respect to the temporary service territory, shall
2 not have any of the rights provided under Sections 8 and 10 of
3 this act.

4 (2) Fix, maintain, or establish the price at which a
5 wholesaler shall sell any wine.

6 (3) Enter into an additional agreement with any
7 other wholesaler for, or to sell to any other wholesaler, the
8 same brand or brands of wine in the same territory or any
9 portion thereof, or to sell directly to any retailer in this
10 state.

11 (4) Coerce, or attempt to coerce, any wholesaler to
12 accept delivery of any wine, or other commodity which has not
13 been ordered by the wholesaler. Provided, however, a supplier
14 may impose reasonable inventory requirements upon a wholesaler
15 if the requirements are made in good faith and are generally
16 applied to other similarly situated wholesalers having an
17 agreement with the supplier.

18 (5) Coerce, or attempt to coerce, any wholesaler to
19 accept delivery of any wine, or other commodity ordered by a
20 wholesaler if the order was cancelled by the wholesaler.

21 (6) Coerce, or attempt to coerce, any wholesaler to
22 do any illegal act or to violate any law or any regulation by
23 threatening to amend, modify, cancel, terminate, or refuse to
24 review any agreement existing between the supplier and
25 wholesaler.

26 (7) Require a wholesaler to assent to any condition,
27 stipulation, or provision limiting the wholesaler's right to

1 sell the brand or brands of wine or other products of any
2 other supplier unless the acquisition of the brand or brands
3 or products of another supplier would materially impair or
4 adversely affect the wholesaler's quality of service, sales,
5 or ability to compete effectively in representing the brand or
6 brands of the supplier presently being sold by the wholesaler.
7 The supplier shall have the burden of proving that such
8 acquisition of such other brand or brands or products would
9 have such effect.

10 (8) Require a wholesaler to purchase one or more
11 brands of wine or other products in order for the wholesaler
12 to purchase another brand or brands of wine for any reason.
13 Provided, however, the wholesaler has agreed to distribute a
14 brand or brands before the effective date of this act shall
15 continue to distribute the brand or brands in conformance with
16 this act.

17 (9) Request a wholesaler to submit audited profit
18 and loss statements, balance sheets, or financial records as a
19 condition of renewal or continuation of an agreement.

20 (10) Withhold delivery of wine ordered by a
21 wholesaler, or change a wholesaler's quota of a brand or
22 brands if the withholding or change is not made in good faith.

23 (11) 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 supplier.

1 (12) Take any retaliatory action against a
2 wholesaler that files a complaint regarding an alleged
3 violation by the supplier of federal, state, or local law or
4 an administrative rule.

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

21 (14) Upon written notice of intent to transfer the
22 wholesaler's business, interfere with, prevent, or
23 unreasonably delay, not to exceed 30 days, the transfer of the
24 wholesaler's business if the proposed transferee is a
25 designated member.

26 (15) Upon written notice of intent to transfer the
27 wholesaler's business other than to a designated member,

1 withhold consent to or approval of, or unreasonably delay, not
2 to exceed 30 days after receipt of all material information
3 reasonably requested, a response to a request by the
4 wholesaler for, any transfer of a wholesaler's business if the
5 proposed transferee meets the nondiscriminatory, material, and
6 reasonable qualifications and standards required by the
7 supplier for Alabama wholesalers. Provided, however, the
8 supplier shall meet the burden of proving that the proposed
9 transferee does not meet such standards and qualifications
10 which are nondiscriminatory, material, and reasonable and have
11 been consistently applied to Alabama wholesalers.

12 (16) Restrict or inhibit, directly or indirectly,
13 the right of free association among wholesalers for any lawful
14 purpose.

15 Section 8. A wholesaler may not do any of the
16 following:

17 (1) Fail to devote reasonable efforts and resources,
18 within supplier's designated sales territory, to the sale and
19 distribution of all the supplier's brands of wine which the
20 wholesaler has been granted the right to sell or distribute.

21 (2) Sell or deliver wine to a retail licensee
22 located outside the sales territory designated to the
23 wholesaler by the supplier of a particular brand or brands of
24 wine. Provided, however, during periods of temporary service
25 interruptions impacting a particular sales territory, a
26 wholesaler who normally services the impacted sales territory
27 shall file with the board and give to the affected supplier

1 written notice designating the specific licensed wholesaler or
2 wholesalers, not disapproved by the supplier, who will service
3 the sales territory during the period of temporary service
4 interruption and the approximate length of time for the
5 service interruption. Each wholesaler designated to
6 temporarily service the sales territory shall be a wholesaler
7 who has a current written agreement with the supplier for the
8 brand or brands affected. When the temporary service
9 interruption is over, the wholesaler who normally services the
10 sales territory shall notify in writing the board, the
11 supplier, and the wholesaler, or wholesalers, servicing the
12 sales territory on a temporary basis of this fact, and any
13 wholesaler servicing the sales territory on a temporary basis
14 shall cease servicing the sales territory upon receipt of
15 notice. A wholesaler who is designated to service the impacted
16 sales territory during the period of temporary service shall
17 not be in violation of this act, and, with respect to the
18 temporary service territory, shall not have any of the rights
19 provided under Sections 8 and 10 of this act.

20 (3) Transfer the wholesaler's business without
21 giving the supplier written notice of intent to transfer the
22 wholesaler's business, and, where required by this act,
23 receiving the supplier's approval for the proposed transfer.
24 Provided, the consent or approval of the supplier shall not be
25 required of any transfer of the wholesaler's business to a
26 designated member, or any transfer of less than control of the
27 wholesaler's business. Provided, however, that the wholesaler

1 shall give the supplier written notice of any change in
2 ownership of the wholesaler.

3 Section 9. (a) Notwithstanding any agreement and
4 except as otherwise provided for in this act, a supplier shall
5 not amend or modify an agreement; cause a wholesaler to resign
6 from an agreement; or cancel, terminate, fail to renew, or
7 refuse to continue under an agreement, unless, in any of the
8 foregoing cases, the supplier has complied with all of the
9 following:

10 (1) Has satisfied the applicable notice requirements
11 of subsection (c) of this section.

12 (2) Has acted in good faith.

13 (3) Has good cause for the amendment, modification,
14 cancellation, termination, nonrenewal, discontinuance, or
15 forced resignation.

16 (b) For each amendment, modification, termination,
17 cancellation, nonrenewal, or discontinuance, the supplier
18 shall have the burden of proving that it has acted in good
19 faith, that the notice requirements under this section have
20 been complied with, and that there was good cause for the
21 amendment, modification, termination, cancellation,
22 nonrenewal, or discontinuance.

23 (c) Notwithstanding any agreement and except as
24 otherwise provided in this section, and in addition to the
25 time limits set forth in subsection (d) (5) of this section,
26 the supplier shall furnish written notice of the amendment,
27 modification, termination, cancellation, nonrenewal, or

1 discontinuance of an agreement to the wholesaler not less than
2 60 days before the effective date of the amendment,
3 modification, termination, cancellation, nonrenewal, or
4 discontinuance. The notice shall be by certified mail and
5 shall contain all of the following:

6 (1) A statement of intention to amend, modify,
7 terminate, cancel, not renew, or discontinue the agreement.

8 (2) A statement of the reason for the amendment,
9 modification, termination, cancellation, nonrenewal, or
10 discontinuance.

11 (3) The date on which the amendment, modification,
12 termination, cancellation, nonrenewal, or discontinuance takes
13 effect.

14 (d) Notwithstanding any agreement, good cause shall
15 exist for the purposes of a termination, cancellation,
16 nonrenewal, or discontinuance under subsection (a)(3) of this
17 section when all of the following occur:

18 (1) There is a failure by the wholesaler to comply
19 with a provision of the agreement which is both reasonable and
20 of material significance to the business relationship between
21 the wholesaler and the supplier.

22 (2) The supplier first acquired knowledge of the
23 failure described in subdivision (1) not more than 18 months
24 before the date notification was given pursuant to subsection
25 (a)(1) of this section.

26 (3) The wholesaler was given notice by the supplier
27 of failure to comply with the agreement.

1 (4) The wholesaler was afforded a reasonable
2 opportunity to assert good faith efforts to comply with the
3 agreement within the time limits as provided for in subsection
4 (d)(5) of this section.

5 (5) The wholesaler has been afforded 30 days in
6 which to submit a plan of corrective action to comply with the
7 agreement and an additional 120 days to cure such
8 noncompliance in accordance with the plan.

9 (e) Notwithstanding subsections (a) and (c) of this
10 section, a supplier may terminate, cancel, fail to renew, or
11 discontinue an agreement immediately upon written notice given
12 in the manner and containing information required by
13 subsection (c) of this section if any of the following occur:

14 (1) Insolvency of the wholesaler, the filing of any
15 petition by or against the wholesaler under any bankruptcy or
16 receivership law, or the assignment for the benefit of
17 creditors or dissolution or liquidation of the wholesaler
18 which materially affects the wholesaler's ability to remain in
19 business.

20 (2) Revocation or suspension of the wholesaler's
21 state or federal license by the appropriate regulatory agency
22 whereby the wholesaler cannot service the wholesaler's sales
23 territory for more than 61 days.

24 (3) The wholesaler, or partner or individual who
25 owns 10 percent or more of the partnership or stock of a
26 corporate wholesaler, has been convicted of a felony under the
27 United States Code or the laws of any state which reasonably

1 may adversely affect the good will or the interest of the
2 wholesaler or supplier. However, an existing stockholder or
3 stockholders, or partner or partners, or a designated member
4 or members, shall have, subject to the provisions of this act,
5 the right to purchase the partnership interest or the stock of
6 the offending partner or stockholder prior to the conviction
7 of the offending partner or stockholder and if the sale is
8 completed prior to conviction the provisions of this
9 subdivision shall not apply.

10 (f) Notwithstanding subsections (a), (c), and (e) of
11 this section, upon not less than 15 days' prior written notice
12 given in the manner and containing the information required by
13 subsection (c) of this section, a supplier may terminate,
14 cancel, fail to renew, or discontinue an agreement if any of
15 the following events occur:

16 (1) There was intentional fraudulent conduct
17 relating to a material matter on the part of the wholesaler in
18 dealings with the supplier. Provided, however, the supplier
19 shall have the burden of proving intentional fraudulent
20 conduct relating to a material matter on the part of the
21 wholesaler.

22 (2) The wholesaler failed to confine to the
23 designated sales territory its sales of a brand or brands to
24 retailers. Provided this subdivision does not apply if there
25 is a dispute between two or more wholesalers as to the
26 boundaries of the assigned territory and the boundary cannot

1 be determined by a reading of the description contained in the
2 agreements between the suppliers and the wholesalers.

3 (3) A wholesaler who has failed to pay for wine
4 ordered and delivered in accordance with established terms
5 with the supplier fails to make full payment within two
6 business days after receipt of written notice of the
7 delinquency and demand for immediate payment from the
8 supplier.

9 (4) A wholesaler intentionally has made a transfer
10 of wholesaler's business, other than a transfer to a
11 designated member or pursuant to a loan agreement or debt
12 instrument, without prior written notice to the supplier, and
13 has failed, within 30 days from the receipt of written notice
14 from the supplier of its intent to terminate on the ground of
15 such transfer, to reverse the transfer of wholesaler's
16 business.

17 (5) A wholesaler intentionally has made a transfer
18 of wholesaler's business other than a transfer to a designated
19 member, although the wholesaler has prior to the transfer
20 received from supplier a timely notice of disapproval of the
21 transfer in accordance with this act.

22 (6) The wholesaler intentionally ceases, or ceases
23 for more than a period of 61 days, to carry on business with
24 respect to any of supplier's brand or brands previously
25 serviced by the wholesaler in its territory designated by the
26 supplier, unless such cessation is due to force majeure or to
27 labor dispute and the wholesaler has made good faith efforts

1 to overcome such events. Provided, however, this shall affect
2 only that brand or brands with respect to which the wholesaler
3 ceased to carry on business.

4 (g) Notwithstanding subsections (a), (c), (e), and
5 (f) of this section, a supplier may terminate, cancel, not
6 renew, or discontinue an agreement upon not less than 30 days'
7 prior written notice if the supplier discontinues production
8 or discontinues distribution in this state of all brands sold
9 by the supplier to the wholesaler. Provided, however, nothing
10 in this section shall prohibit a supplier from:

11 (1) Upon not less than 30 days' notice,
12 discontinuing the distribution of any particular brand of
13 wine.

14 (2) Conducting test marketing of a new brand of wine
15 or of a brand of wine which is not currently being sold in
16 this state, provided that the supplier has notified the board
17 in writing of its plan to test market, which notice shall
18 describe the market area in which the test shall be conducted;
19 the name or names of the wholesaler or wholesalers who will be
20 selling the wine; the name or names of the brand of wine being
21 tested; and the period of time not to exceed 18 months during
22 which the testing will take place.

23 Section 10. (a) Upon written notice of intent to
24 transfer the wholesaler's business, any individual owning or
25 deceased individual who owned an interest in a wholesaler may
26 transfer the wholesaler's business to a designated member, or
27 any other person who meets the nondiscriminatory, material,

1 and reasonable qualifications and standards required by the
2 supplier for Alabama wholesalers. The consent or approval of
3 the supplier shall not be required of any transfer of the
4 wholesaler's business, including the assignment of
5 wholesaler's rights under the agreement, to a designated
6 member or shall not be withheld or unreasonably delayed to a
7 proposed transferee, other than a designated member, who meets
8 such nondiscriminatory, material, and reasonable
9 qualifications and standards. Provided, however, the supplier
10 shall have the burden of proving that the proposed transferee
11 fails to meet such qualifications and standards which are
12 nondiscriminatory, material, and reasonable and consistently
13 applied to Alabama wholesalers by the supplier. Provided, such
14 designated member or transferee shall in no event be qualified
15 as a transferee without the prior written approval or consent
16 of the supplier, where such proposed transferee shall have
17 been involved in any of the following:

18 (1) Insolvency filing of any voluntary or
19 involuntary petition under any bankruptcy or receivership law,
20 or execution of an assignment for the benefit of creditors.

21 (2) Revocation or suspension of an alcoholic
22 beverage license by the regulatory agency of the United States
23 government or any state, whereby service was interrupted for
24 more than 61 days.

25 (3) Conviction of a felony under the United States
26 Code, or the laws of any state which reasonably may adversely

1 affect the good will or interest of the wholesaler or
2 supplier.

3 (4) The involuntary termination, cancellation,
4 nonrenewal, or discontinuance by a supplier of an agreement
5 for good cause.

6 (b) The supplier may not interfere with, prevent, or
7 unreasonably delay the transfer of the wholesaler's business,
8 including an assignment of wholesaler's rights under the
9 agreement, if the proposed transferee is a designated member,
10 or if the transferee other than a designated member meets such
11 nondiscriminatory, material, and reasonable qualifications
12 required by the supplier for Alabama wholesalers. Where the
13 transferee is other than a designated member, the supplier
14 may, in good faith and for good cause related to the
15 reasonable qualifications, refuse to accept the transfer of
16 the wholesaler's business or the assignment of wholesaler's
17 rights under the agreement. The supplier shall have the burden
18 of proving that it has acted in good faith and that there was
19 good cause for failure to accept or consent to the transfer of
20 the wholesaler's business or the assignment of the
21 wholesaler's rights under the agreement.

22 Section 11. (a) Except as provided for in this act,
23 a supplier that has amended, modified, cancelled, terminated,
24 or refused to renew any agreement; or has caused a wholesaler
25 to resign from any agreement; or has interfered with,
26 prevented, or unreasonably delayed, or where required by this
27 act, has withheld or unreasonably delayed consent to or

1 approval of, any assignment or transfer of a wholesaler's
2 business, shall pay the wholesaler reasonable compensation for
3 the diminished value of the wholesaler's business, including
4 any ancillary business which has been negatively affected by
5 the act of the supplier. The value of the wholesaler's
6 business or ancillary business shall include, but not be
7 limited to, any good will. Provided, however, nothing
8 contained in this act shall give rise to a claim against the
9 supplier or wholesaler by any proposed purchaser of
10 wholesaler's business.

11 (b) Should either party, at any time, determine that
12 mutual agreement on the amount of reasonable compensation
13 cannot be reached, the supplier or the wholesaler may send, by
14 certified mail, return receipt requested, written notice to
15 the other party declaring its intention to proceed with
16 arbitration. Arbitration shall proceed only by mutual
17 agreement by both parties.

18 (c) Not more than 10 business days after the notice
19 to enter into arbitration has been delivered, the other party
20 shall send written notice to the requesting party declaring
21 its intention either to proceed or not to proceed with
22 arbitration. Should the other party fail to respond within the
23 10 business days, it shall be conclusively presumed that the
24 other party shall have agreed to arbitration.

25 (d) The matter of determining the amount of
26 compensation may, by agreement of the parties, be submitted to
27 a three-member arbitration panel consisting of one

1 representative selected by the supplier but unassociated with
2 the affected supplier; one wholesaler representative selected
3 by the wholesaler but unassociated with the wholesaler; and an
4 impartial arbitrator chosen as provided in this section.

5 (e) Not more than 10 business days after mutual
6 agreement of both parties has been reached to arbitrate, each
7 party shall designate, in writing, its one arbitrator
8 representative and the party initiating arbitration shall
9 request, in writing, a list of five arbitrators from the
10 American Arbitration Association or its successor and request
11 that the list shall be mailed to each party by certified mail,
12 return receipt requested. Not more than 10 business days after
13 the receipt of the list of five choices, the wholesaler
14 arbitrator and the supplier arbitrator shall strike and
15 disqualify up to two names each from the list. Should either
16 party fail to respond within 10 business days or should more
17 than one name remain after the strikes, the American
18 Arbitration Association shall make the selection of the
19 impartial arbitrator from the names not stricken from the
20 list.

21 (f) Not more than 30 days after the final selection
22 of the arbitration panel is made, the arbitration panel shall
23 convene to decide the dispute. The panel shall conclude the
24 arbitration within 20 days after the arbitration panel
25 convenes and shall render a decision by majority vote of the
26 arbitrators within 20 days from the conclusion of the
27 arbitration. The award of the arbitration panel shall be final

1 and binding on the parties as to the amount of compensation
2 for the diminished value.

3 (g) The cost of the impartial arbitrator, the
4 stenographer, and the meeting site shall be equally divided
5 between the wholesaler and the supplier. All other costs shall
6 be paid by the party incurring them.

7 (h) After both parties have agreed to arbitrate,
8 should either party, except by mutual agreement, fail to abide
9 by the time limitations as prescribed in subsections (c), (e),
10 and (f) of this section, or fail or refuse to make the
11 selection of any arbitrators, or fail to participate in the
12 arbitration hearings, the other party shall make the selection
13 of its arbitrator and proceed to arbitration. The party who
14 has failed or refused to comply as prescribed in this section
15 shall be considered to be in default. Any party considered to
16 be in default pursuant to this subsection shall have waived
17 any and all rights the party would have had in the arbitration
18 and shall be considered to have consented to the determination
19 of the arbitration panel.

20 Section 12. A wholesaler may not waive any of the
21 rights granted in any provision of this act and the provisions
22 of any agreement which would have such an effect shall be null
23 and void. Nothing in this act shall be construed to limit or
24 prohibit good faith dispute settlements voluntarily entered
25 into by the parties.

26 Section 13. (a) This act shall apply to agreements
27 in existence on the effective date of this act, as well as

1 agreements entered into or renewed after the effective date of
2 this act.

3 (b) A transferee of a wholesaler that continues in
4 business as a wholesaler shall have the benefit of and be
5 bound by all terms and conditions of the agreement with the
6 supplier in effect on the date of the transfer; provided,
7 however, a transfer of a wholesaler's business which requires
8 supplier's consent or approval but is disapproved by the
9 supplier shall be null and void.

10 (c) A successor to a supplier that continues in
11 business as a supplier shall be bound by all terms and
12 conditions of each agreement of the supplier in effect on the
13 date of succession.

14 Section 14. (a) If a supplier engages in conduct
15 prohibited under this act, a wholesaler with which the
16 supplier has an agreement may maintain a civil action against
17 the supplier to recover actual damages reasonably incurred as
18 the result of the prohibited conduct. If a wholesaler engages
19 in conduct prohibited under this act, a supplier with which
20 the wholesaler has an agreement may maintain a civil action
21 against the wholesaler to recover actual damages reasonably
22 incurred as the result of the prohibited conduct.

23 (b) A supplier that violates any provision of this
24 act shall be liable for all actual damages and all court costs
25 and, in the court's discretion, reasonable attorney fees
26 incurred by a wholesaler as a result of that violation. A
27 wholesaler that violates any provision of this act shall be

1 liable for all actual damages and all court costs and, in the
2 court's discretion, reasonable attorney fees incurred by the
3 supplier as a result of that violation.

4 (c) This act imposes upon a supplier the duty to
5 deal fairly and in good faith with a wholesaler which has
6 entered into an agreement with the supplier to purchase and
7 sell a brand or brands of wine sold by the supplier. Except as
8 otherwise provided in this act, if a court finds that a
9 supplier has intentionally, consciously, or deliberately acted
10 or failed to act which was not in good faith or was in bad
11 faith either in (1) effecting an amendment, modification,
12 termination, cancellation, or nonrenewal of any agreement; or
13 (2) unreasonably interfering with, preventing, or unreasonably
14 delaying the transfer of the wholesaler's business where
15 approval of the proposed transferee is not required by this
16 act; or (3) unreasonably withholding its consent to or
17 approval of any assignment, transfer, or sale of a
18 wholesaler's business, where approval of the proposed
19 transferee is required by this act; it may, upon proof thereof
20 by clear and convincing evidence as defined in Section 6-11-20
21 of the Code of Alabama 1975, award exemplary or punitive
22 damages, as well as actual damages, court costs, and
23 reasonable attorney fees to the wholesaler who has been
24 damaged by the action or the failure to act of the supplier.
25 Such actions or failure to act on the part of the supplier
26 shall constitute the tort of bad faith, and the amount of any
27 award of punitive damages and the review thereof by the trial

1 or appellate court shall be governed by Section 6-11-25 of the
2 Code of Alabama 1975.

3 (d) A supplier or wholesaler may bring an action for
4 declaratory judgment for determination of any controversy
5 arising pursuant to this act.

6 (e) Upon proper application to the court, a supplier
7 or wholesaler may obtain injunctive relief against any
8 violation of this act. If the court grants injunctive relief
9 or issues a temporary restraining order, bond shall not be
10 required to be posted.

11 (f) The remedies provided by this section are
12 nonexclusive, and nothing contained herein shall abolish any
13 cause of action or remedy available to the supplier or the
14 wholesaler existing on the effective date of this act.

15 (g) Any legal action taken under this act, or in a
16 dispute arising out of an agreement or breach thereof, or over
17 the provisions of an agreement shall be filed in either Lee
18 County Circuit Court or the United States District Court for
19 the Northern District of Alabama.

20 Section 15. The provisions of this act are
21 severable. If any part of this act is declared invalid or
22 unconstitutional, such declaration shall not affect the part
23 which remains.

24 Section 16. This act is cumulative and supplements
25 and is in addition to Sections 28-8-1 to 28-8-8, inclusive
26 Code of Alabama 1975.

1 Section 17. All laws or parts of laws which conflict
2 with this act are repealed.

3 Section 18. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.