

1 HB445
2 206635-1
3 By Representatives Collins, Faulkner, Ball, Smith, Simpson,
4 Hollis, Rafferty, Easterbrook, Brown (K), Wood (D), Nordgren,
5 Meadows, Hatcher and McCutcheon
6 RFD: Economic Development and Tourism
7 First Read: 12-MAR-20

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8 SYNOPSIS: Under existing law, wine manufacturers and
9 importers are required to sell wine through a
10 licensed wholesaler.

11 This bill would require each supplier of
12 wine to designate sales territories for each of its
13 brands and enter into an exclusive franchise
14 agreement with a wholesaler for each sales
15 territory.

16 This bill would set conditions and
17 requirements for franchise agreements between
18 suppliers and wholesale distributors of wine,
19 including provisions for the modification,
20 termination, cancellation, nonrenewal, or
21 discontinuance of an agreement.

22 This bill would apply to franchise
23 agreements entered into before, on, or after
24 December 31, 2019, with exceptions.

25 This bill would provide further duties of
26 the Alcoholic Beverage Control Board.
27

1 A BILL
2 TO BE ENTITLED
3 AN ACT
4

5 Relating to alcoholic beverages; to add Chapter 8A
6 to Title 28 of the Code of Alabama 1975; to require licensed
7 importers and manufacturers of wine to enter into exclusive
8 franchise agreements with wholesalers; to regulate franchise
9 agreements between suppliers and wholesalers of wine; to
10 provide for other business relations between suppliers and
11 wholesalers of wine; to provide that the new Chapter 8A would
12 retroactively apply to agreements entered into before, on, and
13 after December 31, 2019; and to provide for an effective date.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Chapter 8A, commencing with Section
16 28-8A-1, is added to Title 28 of the Code of Alabama 1975, to
17 read as follows:

18 §28-8A-1. Definitions.

19 As used in this chapter, the following terms shall
20 have the following meanings:

21 (1) AGREEMENT. Any agreement between a wholesaler
22 and a supplier, whether oral or written, whereby a wholesaler
23 is granted the right to purchase and sell a brand or brands of
24 wine sold by a supplier.

25 (2) ANCILLARY BUSINESS. A business owned by a
26 wholesaler, or by a substantial partner of a wholesaler, the
27 primary business of which is directly related to the

1 transporting, storing, or marketing of the brand or brands of
2 wine of a supplier with whom the wholesaler has an agreement;
3 or a business owned by a wholesaler, a substantial stockholder
4 of a wholesaler, or a substantial partner of a wholesaler that
5 recycles empty beverage containers.

6 (3) DESIGNATED MEMBER. The spouse, child,
7 grandchild, parent, brother, or sister of a deceased
8 individual who owned an interest, including a controlling
9 interest, in a wholesaler; or any person who inherits the
10 deceased individual's ownership interest in the wholesaler
11 under the terms of the deceased individual's will, or under
12 the laws of intestate succession of this state; or any person
13 who, or entity which, has otherwise by designation in writing
14 by the deceased individual, succeeded the deceased individual
15 in the wholesaler's business, or has succeeded to the deceased
16 individual's ownership interest in the wholesaler pursuant to
17 a written contract or instrument; and also includes the
18 appointed and qualified personal representative and the
19 testamentary trustee of a deceased individual owning an
20 ownership interest in a wholesaler. Designated member also
21 includes a person appointed by the court as the guardian or
22 conservator of the property of an incapacitated individual
23 owning an ownership interest in a wholesaler.

24 (4) GOOD FAITH. Honesty in fact and the observance
25 of reasonable commercial standards of fair dealing in the
26 trade, as defined in and interpreted under the Uniform
27 Commercial Code, Section 7-2-103.

1 (5) REASONABLE QUALIFICATIONS. The standard of the
2 reasonable criteria established and consistently used by the
3 respective supplier for Alabama wholesalers that entered into,
4 continued, or renewed an agreement with the supplier during a
5 period of 24 months prior to the proposed transfer of the
6 wholesaler's business, or for Alabama wholesalers who have
7 changed managers or designated managers during a period of 24
8 months prior to the proposed change in manager or successor
9 manager of the wholesaler's business.

10 (6) RETALIATORY ACTION. Includes, but is not limited
11 to, the refusal to continue an agreement, or a material
12 reduction in the quality of service or in the quantity of
13 products available to a wholesaler under an agreement, which
14 refusal or reduction is not made in good faith.

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

18 (8) SUBSTANTIAL STOCKHOLDER or SUBSTANTIAL PARTNER.
19 A stockholder of, or partner in, the wholesaler who owns an
20 interest of 25 percent or more of the partnership or of the
21 capital stock of a corporate wholesaler.

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

24 (10) TRANSFER OF WHOLESALER'S BUSINESS. The
25 voluntary sale, assignment, or other transfer of all or
26 control of the business, or all or substantially all of the
27 assets of the wholesaler, or all or control of the capital

1 stock of the wholesaler, including without limitation the sale
2 or other transfer of capital stock or assets by merger,
3 consolidation, or dissolution, or of the capital stock of the
4 parent corporation, or of the capital stock or beneficial
5 ownership of any other entity owning or controlling the
6 wholesaler.

7 (11) WHOLESALER. A wholesaler of wine licensed by
8 the board.

9 §28-8A-2. Existing Franchise Laws.

10 (a) This chapter does not apply to regulation of
11 beer franchises.

12 (b) Nothing in this chapter shall be deemed to
13 repeal or amend wine franchise laws existing on August 1,
14 2020. This article is intended to provide wine franchise
15 regulation for counties in which regulation does not exist by
16 local law, and to leave in effect and unchanged existing local
17 wine franchise laws in Baldwin, Jefferson, Mobile, Montgomery,
18 and Shelby Counties.

19 §28-8A-3. Territorial Agreements.

20 Each supplier of wine licensed by the board to sell
21 its wine within the State of Alabama shall sell its wine
22 through wholesaler licensees of the board and shall grant in
23 writing to each of its wholesalers an exclusive sales
24 territory in accordance with Chapter 8.

25 §28-8A-4. Supplier Prohibitions.

26 A supplier shall not do any of the following:

1 (1) Fail to provide each wholesaler of the
2 supplier's brand or brands with a written agreement which
3 contains in total the supplier's agreement with each
4 wholesaler, and designates a specific exclusive sales
5 territory. Any agreement that is in existence on August 1,
6 2020, shall be renewed consistent with this chapter, and this
7 chapter may be incorporated by reference in the agreement. No
8 part of this chapter shall prevent a supplier from appointing,
9 one time for a period not to exceed 90 days, a wholesaler to
10 temporarily service a sales territory not designated to
11 another wholesaler, until such time as a wholesaler is
12 appointed by the supplier; and the wholesaler who is
13 designated to service the sales territory during this period
14 of temporary service shall not be in violation of this
15 chapter, and, with respect to the temporary service territory,
16 shall not have any of the rights provided under Sections
17 28-8A-7 and 28-8A-9.

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

20 (3) Enter into an additional agreement with any
21 other wholesaler for, or to sell to any other wholesaler, the
22 same brand or brands of wine in the same territory or any
23 portion thereof, or to sell directly to any retailer in this
24 state.

25 (4) Coerce, or attempt to coerce, any wholesaler to
26 accept delivery of any wine or other commodity which has not
27 been ordered by the wholesaler. Provided, however, a supplier

1 may impose reasonable inventory requirements upon a wholesaler
2 if the requirements are made in good faith and are generally
3 applied to other similarly situated wholesalers having an
4 agreement with the supplier.

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

8 (6) Coerce, or attempt to coerce, any wholesaler to
9 do any illegal act or to violate any law or any regulation by
10 threatening to amend, modify, cancel, terminate, or refuse to
11 review any agreement existing between the supplier and
12 wholesaler.

13 (7) Require a wholesaler to assent to any condition,
14 stipulation, or provision limiting the wholesaler's right to
15 sell the brand or brands of wine or other products of any
16 other supplier unless the acquisition of the brand or brands
17 or products of another supplier would materially impair or
18 adversely affect the wholesaler's quality of service, sales,
19 or ability to compete effectively in representing the brand or
20 brands of the supplier presently being sold by the wholesaler.
21 The supplier shall have the burden of proving that such
22 acquisition of such other brand or brands or products would
23 have such effect.

24 (8) Require a wholesaler to purchase one or more
25 brands of wine or other products in order for the wholesaler
26 to purchase another brand or brands of wine for any reason. If
27 the wholesaler has agreed to distribute a brand or brands

1 before August 1, 2020, the wholesaler shall continue to
2 distribute that brand or brands, in conformance with this
3 chapter.

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

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

10 (11) Require a wholesaler by any means directly to
11 participate in or contribute to any local or national
12 advertising fund controlled directly or indirectly by a
13 supplier.

14 (12) Take any retaliatory action against a
15 wholesaler that files a complaint regarding an alleged
16 violation by the supplier of federal, state, or local law or
17 an administrative rule.

18 (13) Require or prohibit, without just and
19 reasonable cause, any change in the manager or successor
20 manager of any wholesaler who has been approved by the
21 supplier as of or subsequent to August 1, 2020. Should a
22 wholesaler change an approved manager or successor manager, a
23 supplier shall not require or prohibit the change unless the
24 person selected by the wholesaler fails to meet the
25 nondiscriminatory, material, and reasonable standards and
26 qualifications for managers of Alabama wholesalers of the
27 supplier which previously have been consistently applied to

1 Alabama wholesalers by the supplier. The supplier shall have
2 the burden of proving that a person fails to meet the
3 standards and qualifications which are nondiscriminatory,
4 material, and reasonable and have been consistently applied to
5 Alabama wholesalers.

6 (14) Upon written notice of intent to transfer the
7 wholesaler's business, interfere with, prevent, or
8 unreasonably delay, for longer than 30 days after the receipt
9 of the notice, the transfer of the wholesaler's business if
10 the proposed transferee is a designated member.

11 (15) Upon written notice of intent to transfer the
12 wholesaler's business to a person other than a designated
13 member, withhold consent to or approval of or unreasonably
14 delay, for longer than 30 days after receipt of the notice,
15 the transfer of a wholesaler's business if the proposed
16 transferee meets the nondiscriminatory, material, and
17 reasonable qualifications and standards required by the
18 supplier for Alabama wholesalers. The supplier shall have the
19 burden of proving that the proposed transferee does not meet
20 such standards and qualifications which are nondiscriminatory,
21 material, and reasonable and have been consistently applied to
22 Alabama wholesalers.

23 (16) Restrict or inhibit, directly or indirectly,
24 the right of free association among wholesalers for any lawful
25 purpose.

26 §28-8A-5. Wholesaler Prohibitions.

27 A wholesaler shall not do any of the following:

1 (1) Fail to devote reasonable efforts and resources,
2 within its supplier-designated sales territory, to the sale
3 and distribution of all the supplier's brands of wine which
4 the wholesaler has been granted the right to sell or
5 distribute.

6 (2) Sell or deliver wine to a retail licensee
7 located outside the sales territory designated to the
8 wholesaler by the supplier of a particular brand or brands of
9 wine. Notwithstanding the foregoing, during periods of
10 temporary service interruptions impacting a particular sales
11 territory, a wholesaler who normally services the impacted
12 sales territory shall file with the board and give to the
13 affected supplier written notice designating the specific
14 licensed wholesaler or wholesalers, not disapproved by the
15 supplier, who will service the sales territory during the
16 period of temporary service interruption and the approximate
17 length of time for the service interruption. Each wholesaler
18 designated to temporarily service the sales territory shall be
19 a wholesaler who has a current written agreement with the
20 supplier for the brand or brands affected. When the temporary
21 service interruption is over, the wholesaler who normally
22 services the sales territory shall notify in writing the
23 board, the supplier, and the wholesaler, or wholesalers,
24 servicing the sales territory on a temporary basis of this
25 fact, and any wholesaler servicing the sales territory on a
26 temporary basis shall cease servicing the sales territory upon
27 receipt of notice. A wholesaler who is designated to service

1 the impacted sales territory during the period of temporary
2 service shall not be in violation of this chapter, and, with
3 respect to the temporary service territory, shall not have any
4 of the rights provided under Sections 28-8A-7 and 28-8A-9.

5 (3) Transfer the wholesaler's business without
6 giving the supplier written notice of intent to transfer the
7 wholesaler's business, and, where required by this section,
8 receiving the supplier's approval for the proposed transfer.
9 Provided, the consent or approval of the supplier shall not be
10 required of any transfer of the wholesaler's business to a
11 designated member, or any transfer of less than control of the
12 wholesaler's business. Provided, however, that the wholesaler
13 shall give the supplier written notice of any change in
14 ownership of the wholesaler.

15 §28-8A-6. Supplier and Wholesaler Agreements.

16 (a) Notwithstanding any agreement and except as
17 otherwise provided for in this chapter, a supplier shall not
18 amend or modify an agreement; cause a wholesaler to resign
19 from an agreement; or cancel, terminate, fail to renew, or
20 refuse to continue under an agreement, unless, in any of the
21 foregoing cases, the supplier has complied with all of the
22 following:

23 (1) Has satisfied the applicable notice requirements
24 of subsection (c).

25 (2) Has acted in good faith.

1 (3) Has good cause for the amendment, modification,
2 cancellation, termination, nonrenewal, discontinuance, or
3 forced resignation.

4 (b) For each amendment, modification, termination,
5 cancellation, nonrenewal, or discontinuance, the supplier
6 shall have the burden of proving that it has acted in good
7 faith, that the notice requirements under this section have
8 been complied with, and that there was good cause for the
9 amendment, modification, termination, cancellation,
10 nonrenewal, or discontinuance.

11 (c) Notwithstanding any agreement and except as
12 otherwise provided in this section, and in addition to the
13 time limits set forth in subdivision (5) of subsection (d),
14 the supplier shall furnish written notice of the amendment,
15 modification, termination, cancellation, nonrenewal, or
16 discontinuance of an agreement to the wholesaler not less than
17 60 days before the effective date of the amendment,
18 modification, termination, cancellation, nonrenewal, or
19 discontinuance. The notice shall be by certified mail and
20 shall contain all of the following:

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

23 (2) A statement of the reason for the amendment,
24 modification, termination, cancellation, nonrenewal, or
25 discontinuance.

1 (3) The date on which the amendment, modification,
2 termination, cancellation, nonrenewal, or discontinuance takes
3 effect.

4 (d) Notwithstanding any agreement, good cause shall
5 exist for the purposes of a termination, cancellation,
6 nonrenewal, or discontinuance under subdivision (3) of
7 subsection (a) when all of the following occur:

8 (1) There is a failure by the wholesaler to comply
9 with a provision of the agreement which is both reasonable and
10 of material significance to the business relationship between
11 the wholesaler and the supplier.

12 (2) The supplier first acquired knowledge of the
13 failure described in subdivision (1) of this subsection not
14 more than 18 months before the date notification was given
15 pursuant to subdivision (1) of subsection (a).

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

18 (4) The wholesaler was afforded a reasonable
19 opportunity to assert good faith efforts to comply with the
20 agreement within the time limits as provided for in
21 subdivision (5).

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

26 (e) Notwithstanding subsections (a) and (c), a
27 supplier may terminate, cancel, fail to renew, or discontinue

1 an agreement immediately upon written notice given in the
2 manner and containing information required by subsection (c)
3 if any of the following occur:

4 (1) Insolvency of the wholesaler, the filing of any
5 petition by or against the wholesaler under any bankruptcy or
6 receivership law, or the assignment for the benefit of
7 creditors or dissolution or liquidation of the wholesaler
8 which materially affects the wholesaler's ability to remain in
9 business.

10 (2) Revocation or suspension of the wholesaler's
11 state or federal license by the appropriate regulatory agency
12 whereby the wholesaler cannot service the wholesaler's sales
13 territory for more than 61 days.

14 (3) The wholesaler, or partner or individual who
15 owns 10 percent or more of the partnership or stock of a
16 corporate wholesaler, has been convicted of a felony under
17 federal or any state law which reasonably may adversely affect
18 the good will or the interest of the wholesaler or supplier.
19 However, an existing stockholder or stockholders, or partner
20 or partners, or a designated member or members, subject to
21 this chapter, shall have the right to purchase the partnership
22 interest or the stock of the offending partner or stockholder
23 prior to the conviction of the offending partner or
24 stockholder and if the sale is completed prior to conviction
25 this subdivision shall not apply.

26 (f) Notwithstanding subsections (a), (c), and (e),
27 upon not less than 15 days' prior written notice given in the

1 manner and containing the information required by subsection
2 (c), a supplier may terminate, cancel, fail to renew, or
3 discontinue an agreement if any of the following events occur:

4 (1) There was intentional fraudulent conduct
5 relating to a material matter on the part of the wholesaler in
6 dealings with the supplier. Provided, however, the supplier
7 shall have the burden of proving intentional fraudulent
8 conduct relating to a material matter on the part of the
9 wholesaler.

10 (2) The wholesaler failed to confine to the
11 designated sales territory its sales of a brand or brands to
12 retailers. Provided this subdivision does not apply if there
13 is a dispute between two or more wholesalers as to the
14 boundaries of the assigned territory and the boundary cannot
15 be determined by a reading of the description contained in the
16 agreements between the suppliers and the wholesalers.

17 (3) A wholesaler who has failed to pay for wine
18 ordered and delivered in accordance with established terms
19 with the supplier fails to make full payment within two
20 business days after receipt of written notice of the
21 delinquency and demand for immediate payment from the
22 supplier.

23 (4) A wholesaler intentionally has made a transfer
24 of wholesaler's business, other than a transfer to a
25 designated member or pursuant to a loan agreement or debt
26 instrument, without prior written notice to the supplier, and
27 has failed, within 30 days from the receipt of written notice

1 from the supplier of its intent to terminate on the ground of
2 such transfer, to reverse the transfer of wholesaler's
3 business.

4 (5) A wholesaler intentionally has made a transfer
5 of wholesaler's business other than a transfer to a designated
6 member, although the wholesaler, prior to the transfer, has
7 received from supplier a timely notice of disapproval of the
8 transfer in accordance with this section.

9 (6) The wholesaler intentionally ceases, or ceases
10 for more than a period of 61 days, to carry on business with
11 respect to any of supplier's brand or brands previously
12 serviced by the wholesaler in its territory designated by the
13 supplier, unless such cessation is due to force majeure or to
14 a labor dispute and the wholesaler has made good faith efforts
15 to overcome such events. This subdivision shall affect only
16 that brand or brands with respect to which the wholesaler
17 ceased to carry on business.

18 (g) Notwithstanding subsections (a), (c), (e), and
19 (f), a supplier may terminate, cancel, not renew, or
20 discontinue an agreement upon not less than 30 days' prior
21 written notice if the supplier discontinues production or
22 discontinues distribution in this state of all brands sold by
23 the supplier to the wholesaler. Provided, however, nothing in
24 this section shall prohibit a supplier from doing either of
25 the following:

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

4 (2) Conducting test marketing of a new brand of wine
5 or of a brand of wine which is not currently being sold in
6 this state, if the supplier has notified the board in writing
7 of its plan to test market. The notice shall describe the
8 market area in which the test shall be conducted, the name or
9 names of the wholesaler or wholesalers who will be selling the
10 wine, the name or names of the brand of wine being tested, and
11 the period of time not to exceed 18 months during which the
12 testing will take place.

13 §28-8A-7. Transfers of Wholesaler Business.

14 (a) Upon written notice of intent to transfer the
15 wholesaler's business, any individual owning or deceased
16 individual who owned an interest in a wholesaler may transfer
17 the wholesaler's business to a designated member, or any other
18 person who meets the nondiscriminatory, material, and
19 reasonable qualifications and standards required by the
20 supplier for Alabama wholesalers. The consent or approval of
21 the supplier shall not be required of any transfer of the
22 wholesaler's business, including the assignment of
23 wholesaler's rights under the agreement, to a designated
24 member or shall not be withheld or unreasonably delayed to a
25 proposed transferee, other than a designated member, who meets
26 the nondiscriminatory, material, and reasonable qualifications
27 and standards. Provided, however, the supplier shall have the

1 burden of proving that the proposed transferee fails to meet
2 the qualifications and standards which are nondiscriminatory,
3 material, and reasonable and consistently applied to Alabama
4 wholesalers by the supplier. Provided, the designated member
5 or transferee shall in no event be qualified as a transferee
6 without the prior written approval or consent of the supplier,
7 where the proposed transferee shall have been involved in any
8 of the following:

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

12 (2) Revocation or suspension of an alcoholic
13 beverage license by the regulatory agency of the U. S.
14 government or any state, whereby service was interrupted for
15 more than 61 days.

16 (3) Conviction of a felony under the United States
17 Code, or the laws of any state which reasonably may adversely
18 affect the good will or interest of the wholesaler or
19 supplier.

20 (4) The involuntary termination, cancellation,
21 non-renewal, or discontinuance by a supplier of an agreement
22 for good cause.

23 (b) The supplier shall not interfere with, prevent,
24 or unreasonably delay the transfer of the wholesaler's
25 business, including an assignment of wholesaler's rights under
26 the agreement, if the proposed transferee is a designated
27 member, or if the transferee other than a designated member

1 meets such nondiscriminatory, material, and reasonable
2 qualifications required by the supplier for Alabama
3 wholesalers. Where the transferee is other than a designated
4 member, the supplier, in good faith and for good cause related
5 to the reasonable qualifications, may refuse to accept the
6 transfer of the wholesaler's business or the assignment of
7 wholesaler's rights under the agreement. The supplier shall
8 have the burden of proving that it has acted in good faith and
9 that there was good cause for failure to accept or consent to
10 the transfer of the wholesaler's business or the assignment of
11 the wholesaler's rights under the agreement.

12 §28-8A-8.

13 (a) Except as provided for in this chapter, a
14 supplier that has amended, modified, cancelled, terminated, or
15 refused to renew any agreement; or has caused a wholesaler to
16 resign from any agreement; or has interfered with, prevented,
17 or unreasonably delayed, or where required by this chapter,
18 has withheld or unreasonably delayed consent to or approval
19 of, any assignment or transfer of a wholesaler's business,
20 shall pay the wholesaler reasonable compensation for the
21 diminished value of the wholesaler's business, including any
22 ancillary business which has been negatively affected by the
23 act of the supplier. The value of the wholesaler's business or
24 ancillary business shall include, but not be limited to, any
25 good will. Provided, however, nothing contained in this
26 chapter shall give rise to a claim against the supplier or
27 wholesaler by any proposed purchaser of wholesaler's business.

1 (b) Should either party, at any time, determine that
2 mutual agreement on the amount of reasonable compensation
3 cannot be reached, the supplier or the wholesaler may send by
4 certified mail, return receipt requested, written notice to
5 the other party declaring its intention to proceed with
6 arbitration. Arbitration shall proceed only by mutual
7 agreement by both parties.

8 (c) Not more than 10 business days after the notice
9 to enter into arbitration has been delivered, the other party
10 shall send written notice to the requesting party declaring
11 its intention either to proceed or not to proceed with
12 arbitration. Should the other party fail to respond within the
13 10 business days, it shall be conclusively presumed that the
14 party shall have agreed to arbitration.

15 (d) The matter of determining the amount of
16 compensation, by agreement of the parties, may be submitted to
17 a three-member arbitration panel consisting of one
18 representative selected by the supplier but unassociated with
19 the affected supplier; one wholesaler representative selected
20 by the wholesaler but unassociated with the wholesaler; and an
21 impartial arbitrator chosen as provided in this section.

22 (e) Not more than 10 business days after mutual
23 agreement of both parties has been reached to arbitrate, each
24 party shall designate, in writing, its one arbitrator
25 representative and the party initiating arbitration shall
26 request, in writing, a list of five arbitrators from the
27 American Arbitration Association or its successor and request

1 that the list shall be mailed to each party by certified mail,
2 return receipt requested. Not more than 10 business days after
3 the receipt of the list of five choices, the wholesaler
4 arbitrator and the supplier arbitrator shall strike and
5 disqualify up to two names each from the list. Should either
6 party fail to respond within 10 business days or should more
7 than one name remain after the strikes, the American
8 Arbitration Association shall make the selection of the
9 impartial arbitrator from the names not stricken from the
10 list.

11 (f) Not more than 30 days after the final selection
12 of the arbitration panel is made, the arbitration panel shall
13 convene to decide the dispute. The panel shall conclude the
14 arbitration within 20 days after the arbitration panel
15 convenes and shall render a decision by majority vote of the
16 arbitrators within 20 days from the conclusion of the
17 arbitration. The award of the arbitration panel shall be final
18 and binding on the parties as to the amount of compensation
19 for the diminished value.

20 (g) The cost of the impartial arbitrator, the
21 stenographer, and the meeting site shall be equally divided
22 between the wholesaler and the supplier. All other costs shall
23 be paid by the party incurring them.

24 (h) After both parties have agreed to arbitrate,
25 should either party, except by mutual agreement, fail to abide
26 by the time limitations as prescribed in subsections (c), (e),
27 and (f), or fail or refuse to make the selection of any

1 arbitrators, or fail to participate in the arbitration
2 hearings, the other party shall make the selection of its
3 arbitrator and proceed to arbitration. The party who has
4 failed or refused to comply as prescribed in this section
5 shall be considered to be in default. Any party considered to
6 be in default pursuant to this subsection shall have waived
7 any and all rights the party would have had in the arbitration
8 and shall be considered to have consented to the determination
9 of the arbitration panel.

10 §28-8A-9. No Waiver; Successors and Transferees.

11 (a) A wholesaler may not waive any of the rights
12 granted in this chapter and the provisions of any agreement
13 which would have such an effect shall be void. Nothing in this
14 chapter shall be construed to limit or prohibit good faith
15 dispute settlements voluntarily entered into by the parties.

16 (b) A transferee of a wholesaler that continues in
17 business as a wholesaler shall have the benefit of and be
18 bound by all terms and conditions of the agreement with the
19 supplier in effect on the date of the transfer; provided,
20 however, a transfer of a wholesaler's business which requires
21 supplier's consent or approval but is disapproved by the
22 supplier shall be void.

23 (c) A successor to a supplier that continues in
24 business as a supplier shall be bound by all terms and
25 conditions of each agreement of the supplier in effect on the
26 date of succession.

27 §28-8A-10. Standards of Conduct.

1 (a) If a supplier engages in conduct prohibited
2 under this chapter, a wholesaler with which the supplier has
3 an agreement may maintain a civil action against the supplier
4 to recover actual damages reasonably incurred as the result of
5 the prohibited conduct. If a wholesaler engages in conduct
6 prohibited under this chapter, a supplier with which the
7 wholesaler has an agreement may maintain a civil action
8 against the wholesaler to recover actual damages reasonably
9 incurred as the result of the prohibited conduct.

10 (b) A supplier that violates any provision of this
11 chapter shall be liable for all actual damages and all court
12 costs and, in the court's discretion, reasonable attorney fees
13 incurred by a wholesaler as a result of that violation. A
14 wholesaler that violates any provision of this chapter shall
15 be liable for all actual damages and all court costs and, in
16 the court's discretion, reasonable attorney fees incurred by
17 the supplier as a result of that violation.

18 (c) (1) This chapter imposes upon a supplier the duty
19 to deal fairly and in good faith with a wholesaler which has
20 entered into an agreement with the supplier to purchase and
21 sell a brand or brands of wine sold by the supplier. Except as
22 otherwise provided in this chapter, a court may award
23 exemplary or punitive damages, as well as actual damages,
24 court costs, and reasonable attorney fees to the wholesaler
25 who has been damaged by the action or the failure to act of
26 the supplier if the court, upon proof thereof by clear and
27 convincing evidence as defined in Section 6-11-20, finds that

1 a supplier has intentionally, consciously, or deliberately
2 acted in bad faith or failed to act in good faith in any of
3 the following:

4 a. Effecting an amendment, modification,
5 termination, cancellation, or nonrenewal of any agreement.

6 b. Unreasonably interfering with, preventing, or
7 unreasonably delaying the transfer of the wholesaler's
8 business where approval of the proposed transferee is not
9 required by this chapter.

10 c. Unreasonably withholding its consent to or
11 approval of any assignment, transfer, or sale of a
12 wholesaler's business, where approval of the proposed
13 transferee is required by this chapter.

14 (2) The actions or failure to act on the part of the
15 supplier, as listed in subdivision (1), shall also constitute
16 the tort of bad faith, and the amount of any award of punitive
17 damages and the review thereof by the trial or appellate court
18 shall be governed by Section 6-11-25.

19 (d) A supplier or wholesaler may bring an action for
20 declaratory judgment for determination of any controversy
21 arising pursuant to this chapter.

22 (e) Upon proper application to the court, a supplier
23 or wholesaler may obtain injunctive relief against any
24 violation of this chapter. If the court grants injunctive
25 relief or issues a temporary restraining order, bond shall not
26 be required to be posted.

1 (f) The remedies provided by this section are
2 nonexclusive, and nothing contained in this section shall
3 abolish any cause of action or remedy available to the
4 supplier or the wholesaler existing on August 1, 2020.

5 (g) Any legal action taken under this chapter, or in
6 a dispute arising out of an agreement or breach thereof, or
7 over the provisions of an agreement shall be filed in either
8 the state circuit court or a United States District Court
9 located in any county in which the supplier and wholesaler
10 have a territorial agreement in Alabama.

11 Section 2. Chapter 8A of Title 28, commencing with
12 Section 28-8A-1, Code of Alabama 1975, shall apply to
13 agreements in existence on December 31, 2019, as well as,
14 agreements entered into or renewed after December 31, 2019.

15 Section 3. This act shall become effective on August
16 1, 2020, following its passage and approval by the Governor,
17 or its otherwise becoming law.