

1 SB281
2 204684-4
3 By Senator Waggoner
4 RFD: Tourism
5 First Read: 05-MAR-20

8 SYNOPSIS: Under existing law, wineries are not
9 permitted to ship or distribute wine directly to
10 retailers or residents in the state. Wine
11 manufacturers and importers are required to sell
12 wine through a licensed wholesaler.

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

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

24 This bill would authorize certain wineries
25 to directly ship wine to individuals in the state.

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

1 This bill would delete obsolete language
2 from the Code of Alabama 1975.

3 Amendment 621 of the Constitution of Alabama
4 of 1901, now appearing as Section 111.05 of the
5 Official Recompilation of the Constitution of
6 Alabama of 1901, as amended, prohibits a general
7 law whose purpose or effect would be to require a
8 new or increased expenditure of local funds from
9 becoming effective with regard to a local
10 governmental entity without enactment by a 2/3 vote
11 unless: it comes within one of a number of
12 specified exceptions; it is approved by the
13 affected entity; or the Legislature appropriates
14 funds, or provides a local source of revenue, to
15 the entity for the purpose.

16 The purpose or effect of this bill would be
17 to require a new or increased expenditure of local
18 funds within the meaning of the amendment. However,
19 the bill does not require approval of a local
20 governmental entity or enactment by a 2/3 vote to
21 become effective because it comes within one of the
22 specified exceptions contained in the amendment.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 Relating to alcoholic beverages; to amend Section
2 28-1-4, Code of Alabama 1975; add Section 28-3A-6.1 to the
3 Code of Alabama 1975; to add Chapter 8A to Title 28 of the
4 Code of Alabama 1975; to allow certain wine manufacturers to
5 obtain a wine direct shipper license from the Alcoholic
6 Beverage Control Board to allow the licensee to ship limited
7 quantities of wine directly to individuals in the state for
8 personal use in limited circumstances; to provide for the
9 permitting procedure; to authorize common or permit carriers
10 to ship wine to residents; to provide for reporting from the
11 carriers and wineries to the Alcoholic Beverage Control Board
12 and other applicable agencies; to provide that the direct
13 shipment of wine without a license constitutes a Class C
14 misdemeanor; to require licensed importers and manufacturers
15 of wine to enter into exclusive franchise agreements with
16 wholesalers; to regulate franchise agreements between
17 suppliers and wholesalers of wine; to provide for other
18 business relations between suppliers and wholesalers of wine;
19 to provide for an effective date; and in connection therewith
20 would have as its purpose or effect the requirement of a new
21 or increased expenditure of local funds within the meaning of
22 Amendment 621 of the Constitution of Alabama of 1901, now
23 appearing as Section 111.05 of the Official Recompilation of
24 the Constitution of Alabama of 1901, as amended.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. Section 28-1-4, Code of Alabama 1975, is
27 amended to read as follows:

1 "§28-1-4.

2 "(a) The words and phrases used in this section
3 shall have the meanings ascribed to them in Section 28-3-1 and
4 any acts amendatory thereof, supplementary thereto or
5 substituted therefor.

6 "(b) It shall be unlawful for common or permit
7 carriers, operators of trucks, buses or other conveyances or
8 out-of-state manufacturers or suppliers to make delivery of
9 any alcoholic beverage from ~~without~~ outside the State of
10 Alabama to any person, association or corporation within the
11 state, except to the Alabama Alcoholic Beverage Control Board
12 and to manufacturers, importers, wholesalers and warehouses
13 licensed by the Alabama Alcoholic Beverage Control Board to
14 receive the alcoholic beverages so delivered.

15 "(c) (1) Notwithstanding subsection (b), a common or
16 permit carrier may transport and deliver shipments of table
17 wine to an individual in the state who is at least 21 years of
18 age at the direction of a wine direct shipper licensee, as
19 provided in Section 28-3A-6.1. A common or permit carrier
20 making a shipment as provided in Section 28-3A-6.1 is not
21 required to maintain in the vehicle or within the possession
22 of the driver of the vehicle a bill of lading, consignment, or
23 any other documentary evidence of the cargo being transported
24 other than information available on the package shipping
25 label.

26 "(2) A common or permit carrier who transports and
27 delivers shipments of wine under this subsection shall file

1 quarterly reports with the Tax and Trade Practices Division of
2 the board and the Sales and Use Tax Division of the Department
3 of Revenue of all wine shipments during the reporting period
4 that report all of the following with regard to each shipment:

5 "a. The name and business address of the carrier
6 making the report of shipments of wine under this subsection.

7 "b. The period of time covered by the report.

8 "c. The name and business address of the wine direct
9 shipper licensee who directed the common or permit carrier to
10 ship wine under Section 28-3A-6.1.

11 "d. The weight of the shipment.

12 "e. The name and address of the individual person to
13 whom the wine was shipped.

14 "f. A unique tracking number.

15 "g. The date of delivery.

16 "(3) Any failure by a common or permit carrier to
17 comply with the reporting requirements in this subsection that
18 continues for more than 30 days after receiving notice by the
19 board or Department of Revenue of the failure, may result in
20 the suspension of the carrier's license to operate in the
21 state or the imposition of any other penalty the relevant
22 licensing authority in the state is authorized to impose.

23 ~~"(c)~~ (d) Any violation of subsection ~~(a)~~ of this
24 ~~section~~ (b) shall be a misdemeanor, punishable as provided in
25 ~~paragraph~~ subdivision (1) of subsection (b) of Section
26 28-3A-25.

1 ~~"(d) All laws or parts of law which conflict or are~~
2 ~~inconsistent with this section are hereby repealed, provided,~~
3 ~~however, the provisions of Section 28-1-3 are excluded."~~

4 Section 2. Section 28-3A-6.1 is added to the Code of
5 Alabama 1975, to read as follows:

6 §28-3A-6.1.

7 (a) A manufacturer of wine that holds a federal
8 basic permit as a winery, produces or bottles wine under
9 brands and related labels of wine owned by, or directly
10 licensed to, the manufacturer and produces and bottles,
11 directly and indirectly in the aggregate through affiliates,
12 subsidiaries, or otherwise, less than 50,000 gallons of wine
13 each calendar year, may obtain a wine direct shipper license,
14 as provided in this section. A wine direct shipper licensee,
15 subject to compliance with all terms and provisions of this
16 section, may ship up to 12 nine-liter cases of wine produced
17 or bottled by the licensee to any one household within a
18 12-month period, for personal use and not for resale. The wine
19 shall be shipped by common or permit carrier directly from the
20 licensee's primary place of manufacturing or bottling to an
21 individual in the State of Alabama. A licensee may not ship
22 wine to any individual who is not at least 21 years of age.

23 (b) In order to receive a license to ship wine to an
24 individual, the applicant for a wine direct shipper license
25 shall do all of the following:

26 (1) File an application with the board.

1 (2) If not already licensed as a manufacturer of
2 wine in the State of Alabama, pay a filing fee of two hundred
3 and fifty dollars (\$250). If already licensed as a
4 manufacturer of wine in the State of Alabama, the applicant
5 shall pay no additional filing or license fee.

6 (3) Provide to the board a true copy of its federal
7 basic permit as a winery and evidence that it produces and
8 bottles, directly and indirectly in the aggregate through
9 affiliates, subsidiaries or otherwise, less than 50,000
10 gallons of wine each calendar year.

11 (c) A wine direct shipper licensee:

12 (1) May not ship more wine than is specified in
13 subsection (a) to any one household in a 12-month period.

14 (2) May not ship any wine to any premises licensed
15 by the board.

16 (3) May not ship wine to any address or property
17 that is any of the following:

18 a. A public or private elementary, secondary, or
19 post-secondary educational school, including any dormitory,
20 housing, or common space located on the campus of any
21 elementary, secondary or post-secondary educational school.

22 b. A prison, reformatory, or other correctional
23 facility.

24 c. A hospital or other healthcare facility,
25 including, but not limited to, an acute care, addiction or
26 substance abuse, or mental or psychiatric care facility.

1 d. A locker, a mailbox, a storage facility, or a
2 package shipping or similar service business.

3 e. An address that is not a permanent street
4 address.

5 (4) May not ship any wine as a direct shipper
6 licensee unless that wine has been approved for sale and
7 shipment into the state by the board.

8 (5) May not ship any wine as a direct shipper
9 licensee unless the direct shipper licensee is the owner of
10 the Certificate of Label Approval issued by the Alcohol and
11 Tobacco Tax and Trade Bureau for that wine.

12 (6) Shall ensure that all containers of wine shipped
13 directly to a resident in this state are conspicuously labeled
14 with the words: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21
15 OR OLDER REQUIRED FOR DELIVERY."

16 (7) Shall collect and properly remit all state and
17 local sales or use taxes and excise taxes due on sales into
18 the State of Alabama.

19 (8) Shall permit the board, the Department of
20 Revenue, and the local taxing authority to perform an audit of
21 the wine direct shipper licensee's records upon request.

22 (9) Shall surrender its wine direct shipper license
23 if it produces and bottles, directly and indirectly in the
24 aggregate through affiliates, subsidiaries, or otherwise, more
25 than 50,000 gallons of wine in a calendar year.

26 (d) A wine direct shipper licensee may renew its
27 license with the board by paying annually a renewal fee equal

1 to the initial filing fee provided in subdivision (2) of
2 subsection (b) and providing the board a true copy of its
3 current manufacturer license issued in this state or a true
4 copy of its federal basic permit as a winery and evidence that
5 it produces and bottles, directly and indirectly in the
6 aggregate through affiliates, subsidiaries or otherwise, less
7 than 50,000 gallons of wine each calendar year.

8 (e) The board may adopt rules to implement this
9 section.

10 (f) The board may enforce the requirements of this
11 section to suspend or revoke a wine direct shipper license by
12 the same administrative proceedings that apply to alcoholic
13 beverage licenses, and the board may accept payment of a fine
14 in lieu of suspension or revocation, such payments to be
15 determined by rule adopted by the board.

16 (g) Any person that violates this section,
17 including, but not limited to, any person that ships wine
18 directly to any resident in Alabama without possessing a
19 current wine direct shipper license, any person that receives,
20 makes, participates in, or transports any improper shipment,
21 and any person that properly receives a shipment of wine from
22 a wine direct shipper licensee and then resells such wine, is
23 guilty of a Class C misdemeanor and is subject to a penalty
24 imposed by the board by administrative proceedings that apply
25 to alcoholic beverages licenses, as follows:

26 (1) For the first violation, a fine not to exceed
27 five hundred dollars (\$500).

1 (2) For a second violation, a fine not to exceed
2 three thousand dollars (\$3,000).

3 (3) For a third violation, a fine not to exceed six
4 thousand dollars (\$6,000).

5 (4) For a subsequent violation, suspension of the
6 person's license for a period of not more than two years.

7 Section 3. Chapter 8A, commencing with Section
8 28-8A-1, is added to Title 28 of the Code of Alabama 1975, to
9 read as follows:

10 §28-8A-1. Legislative Intent and General Provisions.

11 (a) This chapter and Sections 28-1-4 and 28-3A-6.1
12 are enacted pursuant to the authority granted to the state
13 under the Twenty-first Amendment to the United States
14 Constitution, the powers reserved to the state under the Tenth
15 Amendment to the United States Constitution, and the inherent
16 powers of the state under the Constitution of Alabama of 1901.
17 It is the intent of the Legislature that this chapter and
18 Sections 28-1-4 and 28-3A-6.1 do all of the following:

19 (1) Further regulate and control alcoholic beverage
20 transactions in the state under the control and supervision of
21 the board.

22 (2) Promote and assure the public's interest in fair
23 and efficient distribution and quality control of alcoholic
24 beverages in the state.

25 (3) Promote orderly marketing of alcoholic
26 beverages.

1 (4) Prevent unfair business practices,
2 discrimination, and undue control of one segment of the
3 alcoholic beverage industry by any other segment.

4 (5) Foster vigorous and healthy competition in the
5 alcoholic beverage industry.

6 (6) Preserve and promote a robust, stable system of
7 distribution of alcoholic beverages to the public.

8 (7) Provide for an orderly system of public revenues
9 by facilitating the collection and accountability of state and
10 local excise taxes.

11 (8) Facilitate the collection of state and local
12 revenue.

13 (9) Promote the health, safety, and welfare of
14 residents of the state by, among other items, ensuring that
15 the Alcoholic Beverage Control Board is able to inspect and
16 seize wine that is being shipped directly into this state and
17 ensuring that the wine meets all of the following conditions:

18 a. The wine has been registered for sale in the
19 state with the Alcoholic Beverage Control Board.

20 b. The wine is not subject to a government mandated
21 or supplier initiated recall.

22 c. The wine is not counterfeit.

23 d. The wine is labeled in conformance with
24 applicable laws, rules, and regulations.

25 e. The wine can be tested by the board or an agent
26 assigned by the board.

27 f. The wine is not prohibited by this state.

1 (10) Promote and maintain a sound, stable, and
2 viable three-tier system of distribution of alcoholic
3 beverages to the public.

4 (b) For the avoidance of doubt, the policy and
5 intent of the Legislature, as expressed in subsection (a), is
6 intended to satisfy the clear articulation test for state
7 action immunity as has been established by the United States
8 Supreme Court in its decision in California Retail Liquor
9 Dealers Assn. v. Midcal Aluminum, Inc., et al., it being the
10 intent of the Legislature to substitute the regulations and
11 oversight established in this chapter for the application of
12 federal and state antitrust laws that otherwise would apply.

13 (c) If any provision of this chapter, or its
14 application to any person or circumstance, is determined by a
15 court to be invalid or unconstitutional, the remaining
16 provisions shall be valid, but existing law shall be construed
17 in accordance with the intent of the Legislature to limit
18 rather than expand commerce in alcoholic beverages and to
19 enhance strict regulatory control over taxation, distribution,
20 and sale of alcoholic beverages through the three-tier system
21 under existing law upon all alcoholic beverages.

22 §28-8A-2. Definitions.

23 As used in this chapter, the following terms shall
24 have the following meanings:

25 (1) AGREEMENT. Any agreement between a wholesaler
26 and a supplier, whether oral or written, whereby a wholesaler

1 is granted the right to purchase and sell a brand or brands of
2 wine sold by a supplier.

3 (2) ANCILLARY BUSINESS. A business owned by a
4 wholesaler, or by a substantial partner of a wholesaler, the
5 primary business of which is directly related to the
6 transporting, storing, or marketing of the brand or brands of
7 wine of a supplier with whom the wholesaler has an agreement;
8 or a business owned by a wholesaler, a substantial stockholder
9 of a wholesaler, or a substantial partner of a wholesaler that
10 recycles empty beverage containers.

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

1 conservator of the property of an incapacitated individual
2 owning an ownership interest in a wholesaler.

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

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

16 (6) RETALIATORY ACTION. Includes, but is not limited
17 to, the refusal to continue an agreement, or a material
18 reduction in the quality of service or in the quantity of
19 products available to a wholesaler under an agreement, which
20 refusal or reduction is not made in good faith.

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

24 (8) SUBSTANTIAL STOCKHOLDER or SUBSTANTIAL PARTNER.
25 A stockholder of or partner in the wholesaler who owns an
26 interest of 25 percent or more of the partnership or of the
27 capital stock of a corporate wholesaler.

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

3 (10) TRANSFER OF WHOLESALER'S BUSINESS. The
4 voluntary sale, assignment, or other transfer of all or
5 control of the business or all or substantially all of the
6 assets of the wholesaler, or all or control of the capital
7 stock of the wholesaler, including without limitation the sale
8 or other transfer of capital stock or assets by merger,
9 consolidation, or dissolution, or of the capital stock of the
10 parent corporation, or of the capital stock or beneficial
11 ownership of any other entity owning or controlling the
12 wholesaler.

13 (11) WHOLESALER. A wholesaler of wine licensed by
14 the board.

15 §28-8A-3. Existing Franchise Laws.

16 (a) This chapter does not apply to regulation of
17 beer franchises.

18 (b) Nothing in this chapter shall be deemed to
19 repeal or amend wine franchise laws existing on August 1,
20 2020. This article is intended to provide wine franchise
21 regulation for counties in which regulation does not exist by
22 local law, and to leave in effect and unchanged existing local
23 wine franchise laws in Baldwin, Jefferson, Mobile, Montgomery,
24 and Shelby Counties.

25 §28-8A-4. Territorial Agreements.

26 Each supplier of wine licensed by the board to sell
27 its wine within the State of Alabama shall sell its wine

1 through wholesaler licensees of the board and shall grant in
2 writing to each of its wholesalers an exclusive sales
3 territory in accordance with Chapter 8.

4 §28-8A-5. Supplier Prohibitions.

5 A supplier shall not do any of the following:

6 (1) Fail to provide each wholesaler of the
7 supplier's brand or brands with a written agreement which
8 contains in total the supplier's agreement with each
9 wholesaler, and designates a specific exclusive sales
10 territory. Any agreement that is in existence on August 1,
11 2020, shall be renewed consistent with this chapter, and this
12 chapter may be incorporated by reference in the agreement. No
13 part of this chapter shall prevent a supplier from appointing,
14 one time for a period not to exceed 90 days, a wholesaler to
15 temporarily service a sales territory not designated to
16 another wholesaler, until such time as a wholesaler is
17 appointed by the supplier; and the wholesaler who is
18 designated to service the sales territory during this period
19 of temporary service shall not be in violation of this
20 chapter, and, with respect to the temporary service territory,
21 shall not have any of the rights provided under Sections
22 28-8A-7 and 28-8A-9.

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

25 (3) Enter into an additional agreement with any
26 other wholesaler for, or to sell to any other wholesaler, the
27 same brand or brands of wine in the same territory or any

1 portion thereof, or to sell directly to any retailer in this
2 state.

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

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

13 (6) Coerce, or attempt to coerce, any wholesaler to
14 do any illegal act or to violate any law or any regulation by
15 threatening to amend, modify, cancel, terminate, or refuse to
16 review any agreement existing between the supplier and
17 wholesaler.

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

1 acquisition of such other brand or brands or products would
2 have such effect.

3 (8) Require a wholesaler to purchase one or more
4 brands of wine or other products in order for the wholesaler
5 to purchase another brand or brands of wine for any reason. If
6 the wholesaler has agreed to distribute a brand or brands
7 before August 1, 2020, the wholesaler shall continue to
8 distribute that brand or brands, in conformance with this
9 chapter.

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

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

16 (11) Require a wholesaler by any means directly to
17 participate in or contribute to any local or national
18 advertising fund controlled directly or indirectly by a
19 supplier.

20 (12) Take any retaliatory action against a
21 wholesaler that files a complaint regarding an alleged
22 violation by the supplier of federal, state, or local law or
23 an administrative rule.

24 (13) Require or prohibit, without just and
25 reasonable cause, any change in the manager or successor
26 manager of any wholesaler who has been approved by the
27 supplier as of or subsequent to August 1, 2020. Should a

1 wholesaler change an approved manager or successor manager, a
2 supplier shall not require or prohibit the change unless the
3 person selected by the wholesaler fails to meet the
4 nondiscriminatory, material, and reasonable standards and
5 qualifications for managers of Alabama wholesalers of the
6 supplier which previously have been consistently applied to
7 Alabama wholesalers by the supplier. The supplier shall have
8 the burden of proving that a person fails to meet the
9 standards and qualifications which are nondiscriminatory,
10 material, and reasonable and have been consistently applied to
11 Alabama wholesalers.

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

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

1 material, and reasonable and have been consistently applied to
2 Alabama wholesalers.

3 (16) Restrict or inhibit, directly or indirectly,
4 the right of free association among wholesalers for any lawful
5 purpose.

6 §28-8A-6. Wholesaler Prohibitions.

7 A wholesaler shall not do any of the following:

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

13 (2) Sell or deliver wine to a retail licensee
14 located outside the sales territory designated to the
15 wholesaler by the supplier of a particular brand or brands of
16 wine. Notwithstanding the foregoing, during periods of
17 temporary service interruptions impacting a particular sales
18 territory, a wholesaler who normally services the impacted
19 sales territory shall file with the board and give to the
20 affected supplier written notice designating the specific
21 licensed wholesaler or wholesalers, not disapproved by the
22 supplier, who will service the sales territory during the
23 period of temporary service interruption and the approximate
24 length of time for the service interruption. Each wholesaler
25 designated to temporarily service the sales territory shall be
26 a wholesaler who has a current written agreement with the
27 supplier for the brand or brands affected. When the temporary

1 service interruption is over, the wholesaler who normally
2 services the sales territory shall notify in writing the
3 board, the supplier, and the wholesaler, or wholesalers,
4 servicing the sales territory on a temporary basis of this
5 fact, and any wholesaler servicing the sales territory on a
6 temporary basis shall cease servicing the sales territory upon
7 receipt of notice. A wholesaler who is designated to service
8 the impacted sales territory during the period of temporary
9 service shall not be in violation of this chapter, and, with
10 respect to the temporary service territory, shall not have any
11 of the rights provided under Sections 28-8A-7 and 28-8A-9.

12 (3) Transfer the wholesaler's business without
13 giving the supplier written notice of intent to transfer the
14 wholesaler's business, and, where required by this section,
15 receiving the supplier's approval for the proposed transfer.
16 Provided, the consent or approval of the supplier shall not be
17 required of any transfer of the wholesaler's business to a
18 designated member, or any transfer of less than control of the
19 wholesaler's business. Provided, however, that the wholesaler
20 shall give the supplier written notice of any change in
21 ownership of the wholesaler.

22 §28-8A-7. Supplier and Wholesaler Agreements.

23 (a) Notwithstanding any agreement and except as
24 otherwise provided for in this chapter, a supplier shall not
25 amend or modify an agreement; cause a wholesaler to resign
26 from an agreement; or cancel, terminate, fail to renew, or
27 refuse to continue under an agreement, unless, in any of the

1 foregoing cases, the supplier has complied with all of the
2 following:

3 (1) Has satisfied the applicable notice requirements
4 of subsection (c).

5 (2) Has acted in good faith.

6 (3) Has good cause for the amendment, modification,
7 cancellation, termination, nonrenewal, discontinuance, or
8 forced resignation.

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

16 (c) Notwithstanding any agreement and except as
17 otherwise provided in this section, and in addition to the
18 time limits set forth in subdivision (5) of subsection (d),
19 the supplier shall furnish written notice of the amendment,
20 modification, termination, cancellation, nonrenewal, or
21 discontinuance of an agreement to the wholesaler not less than
22 60 days before the effective date of the amendment,
23 modification, termination, cancellation, nonrenewal, or
24 discontinuance. The notice shall be by certified mail and
25 shall contain all of the following:

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

1 (2) A statement of the reason for the amendment,
2 modification, termination, cancellation, nonrenewal, or
3 discontinuance.

4 (3) The date on which the amendment, modification,
5 termination, cancellation, nonrenewal, or discontinuance takes
6 effect.

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

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

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

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

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

25 (5) The wholesaler has been afforded 30 days in
26 which to submit a plan of corrective action to comply with the

1 agreement and an additional 120 days to cure such
2 noncompliance in accordance with the plan.

3 (e) Notwithstanding subsections (a) and (c), a
4 supplier may terminate, cancel, fail to renew, or discontinue
5 an agreement immediately upon written notice given in the
6 manner and containing information required by subsection (c)
7 if any of the following occur:

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

14 (2) Revocation or suspension of the wholesaler's
15 state or federal license by the appropriate regulatory agency
16 whereby the wholesaler cannot service the wholesaler's sales
17 territory for more than 61 days.

18 (3) The wholesaler, or partner or individual who
19 owns 10 percent or more of the partnership or stock of a
20 corporate wholesaler, has been convicted of a felony under
21 federal or any state law which reasonably may adversely affect
22 the good will or the interest of the wholesaler or supplier.
23 However, an existing stockholder or stockholders, or partner
24 or partners, or a designated member or members, subject to
25 this chapter, shall have the right to purchase the partnership
26 interest or the stock of the offending partner or stockholder
27 prior to the conviction of the offending partner or

1 stockholder and if the sale is completed prior to conviction
2 this subdivision shall not apply.

3 (f) Notwithstanding subsections (a), (c), and (e),
4 upon not less than 15 days' prior written notice given in the
5 manner and containing the information required by subsection
6 (c), a supplier may terminate, cancel, fail to renew, or
7 discontinue an agreement if any of the following events occur:

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

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

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

1 (4) A wholesaler intentionally has made a transfer
2 of wholesaler's business, other than a transfer to a
3 designated member or pursuant to a loan agreement or debt
4 instrument, without prior written notice to the supplier, and
5 has failed, within 30 days from the receipt of written notice
6 from the supplier of its intent to terminate on the ground of
7 such transfer, to reverse the transfer of wholesaler's
8 business.

9 (5) A wholesaler intentionally has made a transfer
10 of wholesaler's business other than a transfer to a designated
11 member, although the wholesaler, prior to the transfer, has
12 received from supplier a timely notice of disapproval of the
13 transfer in accordance with this section.

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

23 (g) Notwithstanding subsections (a), (c), (e), and
24 (f), a supplier may terminate, cancel, not renew, or
25 discontinue an agreement upon not less than 30 days' prior
26 written notice if the supplier discontinues production or
27 discontinues distribution in this state of all brands sold by

1 the supplier to the wholesaler. Provided, however, nothing in
2 this section shall prohibit a supplier from doing either of
3 the following:

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

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

16 §28-8A-8. Transfers of Wholesaler Business.

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

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

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

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

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

23 (4) The involuntary termination, cancellation,
24 non-renewal, or discontinuance by a supplier of an agreement
25 for good cause.

26 (b) The supplier shall not interfere with, prevent,
27 or unreasonably delay the transfer of the wholesaler's

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

15 §28-8A-9.

16 (a) Except as provided for in this chapter, a
17 supplier that has amended, modified, cancelled, terminated, or
18 refused to renew any agreement; or has caused a wholesaler to
19 resign from any agreement; or has interfered with, prevented,
20 or unreasonably delayed, or where required by this chapter,
21 has withheld or unreasonably delayed consent to or approval
22 of, any assignment or transfer of a wholesaler's business,
23 shall pay the wholesaler reasonable compensation for the
24 diminished value of the wholesaler's business, including any
25 ancillary business which has been negatively affected by the
26 act of the supplier. The value of the wholesaler's business or
27 ancillary business shall include, but not be limited to, any

1 good will. Provided, however, nothing contained in this
2 chapter shall give rise to a claim against the supplier or
3 wholesaler by any proposed purchaser of wholesaler's business.

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

11 (c) Not more than 10 business days after the notice
12 to enter into arbitration has been delivered, the other party
13 shall send written notice to the requesting party declaring
14 its intention either to proceed or not to proceed with
15 arbitration. Should the other party fail to respond within the
16 10 business days, it shall be conclusively presumed that the
17 party shall have agreed to arbitration.

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

25 (e) Not more than 10 business days after mutual
26 agreement of both parties has been reached to arbitrate, each
27 party shall designate, in writing, its one arbitrator

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

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

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

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

14 §28-8A-10. No Waiver; Successors and Transferees.

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

20 (b) This chapter shall apply to agreements in
21 existence on December 31, 2019, as well as agreements entered
22 into or renewed after December 31, 2019.

23 (c) A transferee of a wholesaler that continues in
24 business as a wholesaler shall have the benefit of and be
25 bound by all terms and conditions of the agreement with the
26 supplier in effect on the date of the transfer; provided,
27 however, a transfer of a wholesaler's business which requires

1 supplier's consent or approval but is disapproved by the
2 supplier shall be void.

3 (d) A successor to a supplier that continues in
4 business as a supplier shall be bound by all terms and
5 conditions of each agreement of the supplier in effect on the
6 date of succession.

7 §28-8A-11. Standards of Conduct.

8 (a) If a supplier engages in conduct prohibited
9 under this chapter, a wholesaler with which the supplier has
10 an agreement may maintain a civil action against the supplier
11 to recover actual damages reasonably incurred as the result of
12 the prohibited conduct. If a wholesaler engages in conduct
13 prohibited under this chapter, a supplier with which the
14 wholesaler has an agreement may maintain a civil action
15 against the wholesaler to recover actual damages reasonably
16 incurred as the result of the prohibited conduct.

17 (b) A supplier that violates any provision of this
18 chapter shall be liable for all actual damages and all court
19 costs and, in the court's discretion, reasonable attorney fees
20 incurred by a wholesaler as a result of that violation. A
21 wholesaler that violates any provision of this chapter shall
22 be liable for all actual damages and all court costs and, in
23 the court's discretion, reasonable attorney fees incurred by
24 the supplier as a result of that violation.

25 (c) (1) This chapter imposes upon a supplier the duty
26 to deal fairly and in good faith with a wholesaler which has
27 entered into an agreement with the supplier to purchase and

1 sell a brand or brands of wine sold by the supplier. Except as
2 otherwise provided in this chapter, a court may award
3 exemplary or punitive damages, as well as actual damages,
4 court costs, and reasonable attorney fees to the wholesaler
5 who has been damaged by the action or the failure to act of
6 the supplier if the court, upon proof thereof by clear and
7 convincing evidence as defined in Section 6-11-20, finds that
8 a supplier has intentionally, consciously, or deliberately
9 acted in bad faith or failed to act in good faith in any of
10 the following:

11 a. Effecting an amendment, modification,
12 termination, cancellation, or nonrenewal of any agreement.

13 b. Unreasonably interfering with, preventing, or
14 unreasonably delaying the transfer of the wholesaler's
15 business where approval of the proposed transferee is not
16 required by this chapter.

17 c. Unreasonably withholding its consent to or
18 approval of any assignment, transfer, or sale of a
19 wholesaler's business, where approval of the proposed
20 transferee is required by this chapter.

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

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

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

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

13 (g) Any legal action taken under this chapter, or in
14 a dispute arising out of an agreement or breach thereof, or
15 over the provisions of an agreement shall be filed in any
16 United States District Court located in a county in which the
17 supplier and wholesaler have a territorial agreement in
18 Alabama.

19 Section 4. If any provision of Sections 1 or 2, or
20 its application to any person or circumstance, is determined
21 by a court to be invalid or unconstitutional, the remaining
22 provisions of Sections 1 and 2 shall be invalid, but existing
23 law shall be construed in accordance with the intent of the
24 Legislature to limit rather than expand commerce in alcoholic
25 beverages and to enhance strict regulatory control over
26 taxation, distribution, and sale of alcoholic beverages

1 through the three-tier system under existing law upon all
2 alcoholic beverages.

3 Section 5. Although this bill would have as its
4 purpose or effect the requirement of a new or increased
5 expenditure of local funds, the bill is excluded from further
6 requirements and application under Amendment 621, now
7 appearing as Section 111.05 of the Official Recompilation of
8 the Constitution of Alabama of 1901, as amended, because the
9 bill defines a new crime or amends the definition of an
10 existing crime.

11 Section 6. This act shall become effective on August
12 1, 2020, following its passage and approval by the Governor,
13 or its otherwise becoming law.