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3 HOUSE ECONOMIC DEVELOPMENT AND TOURISM COMMITTEE SUBSTITUTE
4 FOR HB437
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9 SYNOPSIS: Under existing law, a producer of alcoholic
10 beverages may only sell its product to distributors
11 or wholesalers, or directly to consumers in limited
12 quantities at its licensed premises. Also under
13 existing law, common carriers may only make
14 delivery of alcoholic beverages to the Alcoholic
15 Beverage Control Board or licensees of the board.

16 This bill would allow a licensed wine
17 manufacturer to obtain a wine direct shipper
18 license from the Alcoholic Beverage Control Board
19 to allow the licensee to ship limited quantities of
20 wine directly to Alabama residents who are at least
21 21 years of age for their personal use, and would
22 allow common or permit carriers to transport those
23 shipments.

24 This bill would provide for the licensure
25 process and establish certain restrictions and
26 requirements for wine direct shipment licensees.

1 This bill would impose certain duties on an
2 Alabama winery that ships wine directly to
3 consumers, including the collection and remittance
4 of certain taxes.

5 This bill would provide that a person who
6 ships wine directly to a resident without a license
7 is guilty of a Class C misdemeanor. This bill would
8 also provide for revocation of a direct wine
9 shipper license or imposition of fines by the
10 Alcoholic Beverage Control Board for violations of
11 the terms of that license.

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

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

23 This bill would provide further duties of
24 the Alcoholic Beverage Control Board and would
25 authorize the Alcoholic Beverage Control Board to
26 adopt rules.

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

1 Section 1. The Legislature hereby finds and declares
2 that this act is enacted pursuant to the authority granted to
3 the state under the Twenty-First Amendment to the United
4 States Constitution, the powers reserved to the state under
5 the Tenth Amendment to the United States Constitution, and the
6 inherent powers of the state under the Constitution of Alabama
7 of 1901, in order to regulate the traffic of alcoholic
8 beverages and to substitute the regulations and oversight
9 established in this act for the application of federal and
10 state antitrust laws that otherwise would apply to any
11 potential anti-competitive effects of this title. For the
12 avoidance of doubt, the intent of the Legislature is to
13 maintain the uniform three-tier system of control over the
14 sale, purchase, taxation, transportation, manufacture,
15 consumption, and possession of alcoholic beverages in the
16 state to promote the health, safety, and welfare of residents
17 of this state by, among other purposes, ensuring the state
18 shall be able to register, audit, inspect, seize, recall and
19 test alcoholic beverages shipped into, distributed, and sold
20 throughout this state; and this expression of the policy and
21 intent of the Legislature is intended to satisfy the clear
22 articulation test for state action immunity as has been
23 established by the United States Supreme Court in California
24 Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., et al.

25 Section 2. Section 28-1-4, Code of Alabama 1975, is
26 amended to read as follows:

27 "§28-1-4.

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

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

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

25 "(1) A common carrier that delivers wine to a
26 resident of the state shall confirm that any individual
27 physically receiving a shipment of wine is at least 21 years

1 of age and shall require the individual's signature before
2 releasing the shipment to that individual. Any failure by a
3 common carrier, upon receipt of the shipment, to verify the
4 age of the individual receiving the wine may result in the
5 suspension of the common carrier's license to operate in the
6 state or the imposition of any other penalty the relevant
7 licensing authority in the state is authorized to impose.

8 "(2) A common carrier that ships or delivers wine to
9 a resident of the state shall maintain a copy of the signature
10 of the individual who physically received the shipment for at
11 least three years following the date of completion of that
12 shipment or delivery, and, upon request, shall provide a copy
13 of that signature to the Tax and Trade Practices Division of
14 the board. Failure by a common carrier to maintain a copy of
15 the signature of the individual receiving the wine pursuant to
16 this section, or failure to provide a copy of that signature
17 to the board or the Department of Revenue upon request, may
18 result in the suspension of the common carrier's license to
19 operate in the state or the imposition of any other penalty
20 the relevant licensing authority in the state is authorized to
21 impose.

22 "(d) A common carrier that delivers wine to a
23 resident of the state shall file quarterly reports with the
24 Tax and Trade Practices Division of the board of all wine
25 shipments and deliveries during the reporting period that
26 report all of the following with regard to each shipment and
27 delivery:

1 "(1) The name and business address of the person who
2 directed the common carrier to ship wine.

3 "(2) The weight of the shipment.

4 "(3) The name and address of the consumer to whom
5 the wine was shipped.

6 "(4) A unique tracking number.

7 "(5) The date of delivery.

8 "(e) Reports made under subsection (c) shall be
9 considered public records for purposes of Article 3,
10 commencing with Section 36-12-40, of Chapter 12 of Title 36,
11 and shall be made available to law enforcement officers.

12 "(f) A willful failure by a common carrier to comply
13 with the reporting requirements in this section which
14 continues for more than 90 days after receiving notice by the
15 board or Department of Revenue of the failure may result in
16 the suspension of the common carrier's license to operate in
17 the state or the imposition of any other penalty the relevant
18 licensing authority in the state is authorized to impose.

19 ~~"(c) Any violation of subsection (a) of this section~~
20 ~~shall be a misdemeanor, punishable as provided in paragraph~~
21 ~~(1) of subsection (b) of Section 28-3A-25.~~

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

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

1 §28-3A-6.1. Direct shipment of wine by a
2 manufacturer.

3 (a) Any person licensed in this state as a wine
4 manufacturer or who holds a federal basic wine manufacturing
5 permit may obtain a wine direct shipper license from the board
6 as provided in this section, and may ship annually up to 12
7 cases of wine to any one Alabama resident in a 12-month
8 period, each case not exceeding nine liters of wine. The wine
9 shall be shipped directly to a resident of Alabama who is at
10 least 21 years of age for the resident's personal use and not
11 for resale.

12 (b) In order to receive a license to ship wine to an
13 Alabama resident, the applicant for a wine direct shipper
14 license shall do all of the following:

15 (1) File an application with the board.

16 (2) Pay a filing fee of two hundred dollars (\$200).

17 (3) Provide to the board a true copy of its current
18 manufacturer license issued in this state or its federal basic
19 wine manufacturing permit.

20 (c) A wine direct shipper licensee:

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

23 (2) May not ship any wine to any address or property
24 that is any of the following:

25 a. Any premises licensed by the board.

26 b. A public or private elementary, secondary, or
27 post-secondary educational school, including any dormitory,

1 housing, or common space located on the campus of any
2 elementary, secondary or post-secondary educational school.

3 c. A prison, reformatory, or other correctional
4 facility.

5 d. A hospital or other healthcare facility,
6 including, but not limited to, an acute care, addiction or
7 substance abuse, or mental or psychiatric care facility.

8 e. A locker, a mailbox, a storage facility, or a
9 package shipping or similar service business.

10 f. An address that is not a permanent street
11 address.

12 (3) 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 (4) Shall report to the board the total amount of
17 wine directly shipped to consumers in the state during the
18 preceding calendar year, including the amount of wine shipped
19 to each residential address in the state.

20 (5) Whether located within or outside of this state,
21 shall collect and properly remit all state and local sales or
22 use taxes and excise taxes due on sales to Alabama residents.

23 (6) Shall permit the board or the Department of
24 Revenue to perform an audit of the wine direct shipper
25 licensee's records upon request.

1 (7) Shall obtain from the customer an attestation
2 that he or she is at least 21 years of age at the time the
3 order is placed.

4 (8) Shall be deemed to have consented to the
5 jurisdiction of the board or any law enforcement agency and
6 the Alabama courts concerning enforcement of this section and
7 any related laws or administrative rules.

8 (d) A wine direct shipper licensee may renew its
9 license with the board by paying annually a renewal fee of one
10 hundred dollars (\$100) and providing the board a true copy of
11 its current manufacturer license issued in this state or its
12 federal basic wine manufacturing permit.

13 (e) The board may adopt rules pursuant to the
14 Administrative Procedure Act to implement this section.

15 (f) The board may enforce the requirements of this
16 section to suspend or revoke a wine direct shipper license by
17 the same administrative proceedings that apply to alcoholic
18 beverage licenses, and the board may accept payment of a fine
19 in lieu of suspension or revocation. Payments of fines shall
20 be determined by rule adopted by the board.

21 (g) Shipments of wine direct to consumers in Alabama
22 from persons who do not possess a current wine direct shipper
23 license pursuant to this section are prohibited, and any
24 person who knowingly makes, participates in, or transports
25 such a shipment is guilty of a Class C misdemeanor.

1 Section 4. Chapter 8A, commencing with Section
2 28-8A-1, is added to Title 28 of the Code of Alabama 1975, to
3 read as follows:

4 §28-8A-1. Legislative Intent and General Provisions.

5 (a) The Legislature hereby finds and declares that
6 this chapter is enacted pursuant to the authority granted to
7 the state under the Twenty-First Amendment to the United
8 States Constitution, the powers reserved to the state under
9 the Tenth Amendment to the United States Constitution, and the
10 inherent powers of the state under the Constitution of Alabama
11 of 1901, in order to regulate the traffic of alcoholic
12 beverages and to substitute the regulations and oversight
13 established in this act for the application of federal and
14 state antitrust laws that otherwise would apply to any
15 potential anti-competitive effects of this title. For the
16 avoidance of doubt, the intent of the Legislature is to
17 maintain the uniform three-tier system of control over the
18 sale, purchase, taxation, transportation, manufacture,
19 consumption, and possession of alcoholic beverages in the
20 state to promote the health, safety, and welfare of residents
21 of this state by, among other purposes, ensuring the state
22 shall be able to register, audit, inspect, seize, recall and
23 test alcoholic beverages shipped into, distributed, and sold
24 throughout this state; and this expression of the policy and
25 intent of the Legislature is intended to satisfy the clear
26 articulation test for state action immunity as has been

1 established by the United States Supreme Court in California
2 Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., et al.

3 (b) If any provision of this chapter, or its
4 application to any person or circumstance, is determined by a
5 court to be invalid or unconstitutional, that provision shall
6 be stricken and the remaining provisions shall be construed in
7 accordance with the intent of the Legislature to further limit
8 rather than expand commerce in alcoholic beverages, including
9 by prohibiting any commerce in alcoholic beverages not
10 expressly authorized, and to enhance strict regulatory control
11 over taxation, distribution, and sale of alcoholic beverages
12 through the existing uniform system of regulation of alcoholic
13 beverages.

14 §28-8A-2. Definitions.

15 As used in this chapter, the following terms shall
16 have the following meanings:

17 (1) AGREEMENT. Any agreement between a wholesaler
18 and a supplier, whether oral or written, whereby a wholesaler
19 is granted the right to purchase and sell a brand or brands of
20 wine sold by a supplier.

21 (2) ANCILLARY BUSINESS. A business owned by a
22 wholesaler, or by a substantial partner of a wholesaler, the
23 primary business of which is directly related to the
24 transporting, storing, or marketing of the brand or brands of
25 wine of a supplier with whom the wholesaler has an agreement;
26 or a business owned by a wholesaler, a substantial stockholder

1 of a wholesaler, or a substantial partner of a wholesaler that
2 recycles empty beverage containers.

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

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

25 (5) REASONABLE QUALIFICATIONS. The standard of the
26 reasonable criteria established and consistently used by the
27 respective supplier for Alabama wholesalers that entered into,

1 continued, or renewed an agreement with the supplier during a
2 period of 24 months prior to the proposed transfer of the
3 wholesaler's business, or for Alabama wholesalers who have
4 changed managers or designated managers during a period of 24
5 months prior to the proposed change in manager or successor
6 manager of the wholesaler's business.

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

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

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

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

21 (10) TRANSFER OF WHOLESALER'S BUSINESS. The
22 voluntary sale, assignment, or other transfer of all or
23 control of the business or all or substantially all of the
24 assets of the wholesaler, or all or control of the capital
25 stock of the wholesaler, including without limitation the sale
26 or other transfer of capital stock or assets by merger,
27 consolidation, or dissolution, or of the capital stock of the

1 parent corporation, or of the capital stock or beneficial
2 ownership of any other entity owning or controlling the
3 wholesaler.

4 (11) WHOLESALER. A wholesaler of wine licensed by
5 the board.

6 §28-8A-3. Existing Franchise Laws.

7 (a) This chapter does not apply to regulation of
8 beer franchises.

9 (b) Nothing in this chapter shall be deemed to
10 repeal or amend wine franchise laws existing on August 1,
11 2021. This article is intended to provide wine franchise
12 regulation for counties in which regulation does not exist by
13 local law, and to leave in effect and unchanged existing local
14 wine franchise laws in Baldwin, Jefferson, Mobile, Montgomery,
15 and Shelby Counties.

16 §28-8A-4. Territorial Agreements.

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

22 §28-8A-5. Supplier Prohibitions.

23 A supplier shall not do any of the following:

24 (1) Fail to provide each wholesaler of the
25 supplier's brand or brands with a written agreement which
26 contains in total the supplier's agreement with each
27 wholesaler, and designates a specific exclusive sales

1 territory. Any agreement that is in existence on August 1,
2 2021, shall be renewed consistent with this chapter, and this
3 chapter may be incorporated by reference in the agreement. No
4 part of this chapter shall prevent a supplier from appointing,
5 one time for a period not to exceed 90 days, a wholesaler to
6 temporarily service a sales territory not designated to
7 another wholesaler, until such time as a wholesaler is
8 appointed by the supplier; and the wholesaler who is
9 designated to service the sales territory during this period
10 of temporary service shall not be in violation of this
11 chapter, and, with respect to the temporary service territory,
12 shall not have any of the rights provided under Sections
13 28-8A-7 and 28-8A-9.

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

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

21 (4) Coerce, or attempt to coerce, any wholesaler to
22 accept delivery of any wine or other commodity which has not
23 been ordered by the wholesaler. Provided, however, a supplier
24 may impose reasonable inventory requirements upon a wholesaler
25 if the requirements are made in good faith and are generally
26 applied to other similarly situated wholesalers having an
27 agreement with the supplier.

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

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

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

20 (8) Require a wholesaler to purchase one or more
21 brands of wine or other products in order for the wholesaler
22 to purchase another brand or brands of wine for any reason. If
23 the wholesaler has agreed to distribute a brand or brands
24 before August 1, 2021, the wholesaler shall continue to
25 distribute that brand or brands, in conformance with this
26 chapter.

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

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

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

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

15 (13) Require or prohibit, without just and
16 reasonable cause, any change in the manager or successor
17 manager of any wholesaler who has been approved by the
18 supplier as of or subsequent to August 1, 2021. Should a
19 wholesaler change an approved manager or successor manager, a
20 supplier shall not require or prohibit the change unless the
21 person selected by the wholesaler fails to meet the
22 nondiscriminatory, material, and reasonable standards and
23 qualifications for managers of Alabama wholesalers of the
24 supplier which previously have been consistently applied to
25 Alabama wholesalers by the supplier. The supplier shall have
26 the burden of proving that a person fails to meet the
27 standards and qualifications which are nondiscriminatory,

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

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

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

20 (16) Restrict or inhibit, directly or indirectly,
21 the right of free association among wholesalers for any lawful
22 purpose.

23 §28-8A-6. Wholesaler Prohibitions.

24 A wholesaler shall not do any of the following:

25 (1) Fail to devote reasonable efforts and resources,
26 within its supplier-designated sales territory, to the sale
27 and distribution of all the supplier's brands of wine which

1 the wholesaler has been granted the right to sell or
2 distribute.

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

1 respect to the temporary service territory, shall not have any
2 of the rights provided under Sections 28-8A-7 and 28-8A-9.

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

13 §28-8A-7. Supplier and Wholesaler Agreements.

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

21 (1) Has satisfied the applicable notice requirements
22 of subsection (c).

23 (2) Has acted in good faith.

24 (3) Has good cause for the amendment, modification,
25 cancellation, termination, nonrenewal, discontinuance, or
26 forced resignation.

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

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

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

20 (2) A statement of the reason for the amendment,
21 modification, termination, cancellation, nonrenewal, or
22 discontinuance.

23 (3) The date on which the amendment, modification,
24 termination, cancellation, nonrenewal, or discontinuance takes
25 effect.

26 (d) Notwithstanding any agreement, good cause shall
27 exist for the purposes of a termination, cancellation,

1 nonrenewal, or discontinuance under subdivision (3) of
2 subsection (a) when all of the following occur:

3 (1) There is a failure by the wholesaler to comply
4 with a provision of the agreement which is both reasonable and
5 of material significance to the business relationship between
6 the wholesaler and the supplier.

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

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

13 (4) The wholesaler was afforded a reasonable
14 opportunity to assert good faith efforts to comply with the
15 agreement within the time limits as provided for in
16 subdivision (5).

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

21 (e) Notwithstanding subsections (a) and (c), a
22 supplier may terminate, cancel, fail to renew, or discontinue
23 an agreement immediately upon written notice given in the
24 manner and containing information required by subsection (c)
25 if any of the following occur:

26 (1) Insolvency of the wholesaler, the filing of any
27 petition by or against the wholesaler under any bankruptcy or

1 receivership law, or the assignment for the benefit of
2 creditors or dissolution or liquidation of the wholesaler
3 which materially affects the wholesaler's ability to remain in
4 business.

5 (2) Revocation or suspension of the wholesaler's
6 state or federal license by the appropriate regulatory agency
7 whereby the wholesaler cannot service the wholesaler's sales
8 territory for more than 61 days.

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

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

26 (1) There was intentional fraudulent conduct
27 relating to a material matter on the part of the wholesaler in

1 dealings with the supplier. Provided, however, the supplier
2 shall have the burden of proving intentional fraudulent
3 conduct relating to a material matter on the part of the
4 wholesaler.

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

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

18 (4) A wholesaler intentionally has made a transfer
19 of wholesaler's business, other than a transfer to a
20 designated member or pursuant to a loan agreement or debt
21 instrument, without prior written notice to the supplier, and
22 has failed, within 30 days from the receipt of written notice
23 from the supplier of its intent to terminate on the ground of
24 such transfer, to reverse the transfer of wholesaler's
25 business.

26 (5) A wholesaler intentionally has made a transfer
27 of wholesaler's business other than a transfer to a designated

1 member, although the wholesaler, prior to the transfer, has
2 received from supplier a timely notice of disapproval of the
3 transfer in accordance with this section.

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

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

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

24 (2) Conducting test marketing of a new brand of wine
25 or of a brand of wine which is not currently being sold in
26 this state, if the supplier has notified the board in writing
27 of its plan to test market. The notice shall describe the

1 market area in which the test shall be conducted, the name or
2 names of the wholesaler or wholesalers who will be selling the
3 wine, the name or names of the brand of wine being tested, and
4 the period of time not to exceed 18 months during which the
5 testing will take place.

6 §28-8A-8. Transfers of Wholesaler Business.

7 (a) Upon written notice of intent to transfer the
8 wholesaler's business, any individual owning or deceased
9 individual who owned an interest in a wholesaler may transfer
10 the wholesaler's business to a designated member, or any other
11 person who meets the nondiscriminatory, material, and
12 reasonable qualifications and standards required by the
13 supplier for Alabama wholesalers. The consent or approval of
14 the supplier shall not be required of any transfer of the
15 wholesaler's business, including the assignment of
16 wholesaler's rights under the agreement, to a designated
17 member or shall not be withheld or unreasonably delayed to a
18 proposed transferee, other than a designated member, who meets
19 the nondiscriminatory, material, and reasonable qualifications
20 and standards. Provided, however, the supplier shall have the
21 burden of proving that the proposed transferee fails to meet
22 the qualifications and standards which are nondiscriminatory,
23 material, and reasonable and consistently applied to Alabama
24 wholesalers by the supplier. Provided, the designated member
25 or transferee shall in no event be qualified as a transferee
26 without the prior written approval or consent of the supplier,

1 where the proposed transferee shall have been involved in any
2 of the following:

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

6 (2) Revocation or suspension of an alcoholic
7 beverage license by the regulatory agency of the U. S.
8 government or any state, whereby service was interrupted for
9 more than 61 days.

10 (3) Conviction of a felony under the United States
11 Code, or the laws of any state which reasonably may adversely
12 affect the good will or interest of the wholesaler or
13 supplier.

14 (4) The involuntary termination, cancellation,
15 non-renewal, or discontinuance by a supplier of an agreement
16 for good cause.

17 (b) The supplier shall not interfere with, prevent,
18 or unreasonably delay the transfer of the wholesaler's
19 business, including an assignment of wholesaler's rights under
20 the agreement, if the proposed transferee is a designated
21 member, or if the transferee other than a designated member
22 meets such nondiscriminatory, material, and reasonable
23 qualifications required by the supplier for Alabama
24 wholesalers. Where the transferee is other than a designated
25 member, the supplier, in good faith and for good cause related
26 to the reasonable qualifications, may refuse to accept the
27 transfer of the wholesaler's business or the assignment of

1 wholesaler's rights under the agreement. The supplier shall
2 have the burden of proving that it has acted in good faith and
3 that there was good cause for failure to accept or consent to
4 the transfer of the wholesaler's business or the assignment of
5 the wholesaler's rights under the agreement.

6 §28-8A-9.

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

22 (b) Should either party, at any time, determine that
23 mutual agreement on the amount of reasonable compensation
24 cannot be reached, the supplier or the wholesaler may send by
25 certified mail, return receipt requested, written notice to
26 the other party declaring its intention to proceed with

1 arbitration. Arbitration shall proceed only by mutual
2 agreement by both parties.

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

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

17 (e) Not more than 10 business days after mutual
18 agreement of both parties has been reached to arbitrate, each
19 party shall designate, in writing, its one arbitrator
20 representative and the party initiating arbitration shall
21 request, in writing, a list of five arbitrators from the
22 American Arbitration Association or its successor and request
23 that the list shall be mailed to each party by certified mail,
24 return receipt requested. Not more than 10 business days after
25 the receipt of the list of five choices, the wholesaler
26 arbitrator and the supplier arbitrator shall strike and
27 disqualify up to two names each from the list. Should either

1 party fail to respond within 10 business days or should more
2 than one name remain after the strikes, the American
3 Arbitration Association shall make the selection of the
4 impartial arbitrator from the names not stricken from the
5 list.

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

15 (g) The cost of the impartial arbitrator, the
16 stenographer, and the meeting site shall be equally divided
17 between the wholesaler and the supplier. All other costs shall
18 be paid by the party incurring them.

19 (h) After both parties have agreed to arbitrate,
20 should either party, except by mutual agreement, fail to abide
21 by the time limitations as prescribed in subsections (c), (e),
22 and (f), or fail or refuse to make the selection of any
23 arbitrators, or fail to participate in the arbitration
24 hearings, the other party shall make the selection of its
25 arbitrator and proceed to arbitration. The party who has
26 failed or refused to comply as prescribed in this section
27 shall be considered to be in default. Any party considered to

1 be in default pursuant to this subsection shall have waived
2 any and all rights the party would have had in the arbitration
3 and shall be considered to have consented to the determination
4 of the arbitration panel.

5 §28-8A-10. No Waiver; Successors and Transferees.

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

11 (b) This chapter shall apply to agreements in
12 existence on December 31, 2020, as well as agreements entered
13 into or renewed after December 31, 2020.

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

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

25 §28-8A-11. Standards of Conduct.

26 (a) If a supplier engages in conduct prohibited
27 under this chapter, a wholesaler with which the supplier has

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

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

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

1 acted in bad faith or failed to act in good faith in any of
2 the following:

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

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

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

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

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

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

26 (f) The remedies provided by this section are
27 nonexclusive, and nothing contained in this section shall

1 abolish any cause of action or remedy available to the
2 supplier or the wholesaler existing on August 1, 2021.

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

8 Section 5. If any provision of this act, or its
9 application to any person or circumstance, is determined by a
10 court to be invalid or unconstitutional, that provision shall
11 be stricken and the remaining provisions shall be construed in
12 accordance with the intent of the Legislature to further limit
13 rather than expand commerce in alcoholic beverages, including
14 by prohibiting any commerce in alcoholic beverages not
15 expressly authorized, and to enhance strict regulatory control
16 over taxation, distribution, and sale of alcoholic beverages
17 through the existing uniform system of regulation of alcoholic
18 beverages.

19 Section 6. Although this bill would have as its
20 purpose or effect the requirement of a new or increased
21 expenditure of local funds, the bill is excluded from further
22 requirements and application under Amendment 621, now
23 appearing as Section 111.05 of the Official Recompilation of
24 the Constitution of Alabama of 1901, as amended, because the
25 bill defines a new crime or amends the definition of an
26 existing crime.

1 Section 7. This act shall become effective on August
2 1, 2021, following its passage and approval by the Governor,
3 or its otherwise becoming law.