

2  
3 TOURISM AND MARKETING SUBSTITUTE FOR HB437  
4  
5  
6  
7

8 SYNOPSIS: Under existing law, a producer of wine may  
9 only sell its product to distributors or  
10 wholesalers, or directly to consumers in limited  
11 quantities at its licensed premises. Also under  
12 existing law, common or permit carriers may only  
13 make delivery of wine to the Alcoholic Beverage  
14 Control Board or licensees of the board.

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

23 This bill would provide for the licensure  
24 process and establish certain restrictions and  
25 requirements for wine direct shipment licensees and  
26 wine fulfillment center 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 wine; to amend Section 28-1-4, Code of  
2                   Alabama 1975; to add Sections 28-3A-6.1 and 28-3A-6.2 and  
3                   Chapter 8A of Title 28 to the Code of Alabama 1975; to allow  
4                   certain wine manufacturers to obtain a direct wine shipper  
5                   license from the Alcoholic Beverage Control Board to allow the  
6                   licensee to ship limited quantities of wine to Alabama  
7                   residents for personal use in limited circumstances; to  
8                   provide for the licensing procedure for direct wine shippers  
9                   and wine fulfillment centers; to authorize common or permit  
10                  carriers to ship wine to residents; to provide for reporting  
11                  from the carriers and wineries to the Alcoholic Beverage  
12                  Control Board and other applicable agencies; to provide that  
13                  the direct shipment of wine without a license constitutes a  
14                  Class C misdemeanor; to authorize the Alcoholic Beverage  
15                  Control Board to adopt rules; to require licensed importers  
16                  and manufacturers of wine to enter into exclusive franchise  
17                  agreements with wholesalers; to regulate franchise agreements  
18                  between suppliers and wholesalers of wine; to provide for  
19                  other business relations between suppliers and wholesalers of  
20                  wine; to provide for an effective date; and in connection  
21                  therewith would have as its purpose or effect the requirement  
22                  of a new or increased expenditure of local funds within the  
23                  meaning of Amendment 621 of the Constitution of Alabama of  
24                  1901, now appearing as Section 111.05 of the Official  
25                  Recompilation of the Constitution of Alabama of 1901, as  
26                  amended.

27                  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) A common or permit carrier may ship and  
16 transport shipments of wine to an Alabama resident who is at  
17 least 21 years of age at the direction of a direct wine  
18 shipper licensee, as provided in Sections 28-3A-6.1 and  
19 28-3A-6.2. A common or permit carrier making a shipment as  
20 provided in Sections 28-3A-6.1 or 28-3A-6.2 is not required to  
21 maintain in the vehicle or within the possession of the driver  
22 of the vehicle a bill of lading, consignment, or any other  
23 documentary evidence of the cargo being transported other than  
24 information available on the package shipping label.

25           "(1) A common or permit carrier that ships and  
26 transports wine to a resident of the state shall make shipment  
27 as provided in Sections 28-3A-6.1 and 28-3A-6.2, shall confirm

1 that any individual physically receiving a shipment of wine is  
2 at least 21 years of age, and shall require the individual's  
3 signature before releasing the shipment to that individual.  
4 Any failure by a common or permit carrier, upon receipt of the  
5 shipment, to verify the age of the individual receiving the  
6 wine may result in the suspension of the common or permit  
7 carrier's license to operate in the state or the imposition of  
8 any other penalty the relevant licensing authority in the  
9 state is authorized to impose.

10 "(2) A common or permit carrier that ships and  
11 transports wine to a resident of the state shall make shipment  
12 as provided in Sections 28-3A-6.1 and 28-3A-6.2, shall  
13 maintain a copy of the signature of the individual who  
14 physically received the shipment for at least three years  
15 following the date of completion of that shipment, and, upon  
16 request, shall provide a copy of that signature to the Tax and  
17 Trade Practices Division of the board. Failure by a common or  
18 permit carrier to maintain a copy of the signature of the  
19 individual receiving the wine pursuant to this section, or  
20 failure to provide a copy of that signature to the board or  
21 the Department of Revenue upon request, may result in the  
22 suspension of the common or permit carrier's license to  
23 operate in the state or the imposition of any other penalty  
24 the relevant licensing authority in the state is authorized to  
25 impose.

26 "(d) A common or permit carrier that ships and  
27 transports wine to a resident of the state shall make shipment

1 as provided in Sections 28-3A-6.1 and 28-3A-6.2 and shall file  
2 quarterly reports with the Tax and Trade Practices Division of  
3 the board of all wine shipments during the reporting period  
4 that report all of the following with regard to each shipment:

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

7 "(2) The weight of the shipment.

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

10 "(4) A unique tracking number.

11 "(5) The date of delivery.

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

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

24 ~~"(c) Any violation of subsection (a) of this section~~  
25 ~~shall be a misdemeanor, punishable as provided in paragraph~~  
26 ~~(1) of subsection (b) of Section 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 3. Sections 28-3A-6.1 and 28-3A-6.2 are  
5 added to the Code of Alabama 1975, to read as follows:

6           §28-3A-6.1. Direct shipment of wine by a  
7 manufacturer.

8           (a) Any person licensed by the board as a wine  
9 manufacturer who holds a federal basic wine manufacturing  
10 permit pursuant to the Federal Alcohol Administration Act, 27  
11 U.S.C. § 201 et seq., and who is in the business of  
12 manufacturing and bottling wine may obtain a direct wine  
13 shipper license from the board as provided in this section. A  
14 direct wine shipper licensee may ship annually up to 12 cases  
15 of unopened containers of wine to any one Alabama resident in  
16 a 12-month period, each case not exceeding nine liters of  
17 wine. A direct wine shipper licensee may ship only wine (i)  
18 produced by the direct wine shipper licensee; (ii) produced by  
19 or for the direct wine shipper licensee under a written  
20 contract, existing at the time of shipment, with another  
21 manufacturer of wine that holds a federal basic wine  
22 manufacturing permit pursuant to the Federal Alcohol  
23 Administration Act, 27 U.S.C. § 201 et seq., and who is in the  
24 business of manufacturing and bottling wine; or (iii)  
25 exclusively produced and bottled for the direct wine shipper  
26 licensee by a manufacturer of wine that holds a federal basic  
27 wine manufacturing permit pursuant to the Federal Alcohol

1 Administration Act, 27 U.S.C. § 201 et seq., and who is in the  
2 business of manufacturing and bottling wine. The wine shall be  
3 shipped and transported by common or permit carrier directly  
4 from the direct wine shipper licensee's licensed premises, or  
5 from the direct wine shipper licensee through a wine  
6 fulfillment center as provided in Section 28-3A-6.2, to a  
7 resident of Alabama who is at least 21 years of age for the  
8 resident's personal use and not for resale.

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

12 (1) File an application with the board.

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

14 (3) Provide to the board a true copy of its current  
15 manufacturer license issued by the board and a true copy of  
16 its federal basic wine manufacturing permit.

17 (c) A direct wine shipper licensee:

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

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

22 a. Any premises licensed by the board.

23 b. A public or private elementary, secondary, or  
24 post-secondary educational school, including any dormitory,  
25 housing, or common space located on the campus of any  
26 elementary, secondary or post-secondary educational school.

1 c. A prison, reformatory, or other correctional  
2 facility.

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

6 e. A locker, a mailbox, a storage facility, or a  
7 package shipping or similar service business.

8 f. An address that is not a permanent street  
9 address.

10 (3) May only ship wine that has been approved by the  
11 board for sale and shipment within or into the state and for  
12 which the direct wine shipper licensee does either of the  
13 following:

14 a. Owns the Certificate of Label Approval issued by  
15 the Alcohol and Tobacco Tax and Trade Bureau.

16 b. Has the exclusive right to sell the wine in the  
17 United States under a written contract, existing at time of  
18 shipment, with the manufacturer of wine that holds a federal  
19 basic wine manufacturing permit pursuant to the Federal  
20 Alcohol Administration Act, 27 U.S.C. § 201 et seq., and is  
21 the owner of the Certificate of Label Approval issued by the  
22 Alcohol and Tobacco Tax and Trade Bureau.

23 (4) Shall ensure that all containers of wine shipped  
24 directly to a resident in this state are conspicuously labeled  
25 with the words: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21  
26 OR OLDER REQUIRED FOR DELIVERY."

1                   (5) Shall report to the board on a quarterly basis  
2 in a manner prescribed by the board all of the following  
3 information for each wine shipment into the state pursuant to  
4 this section:

5                   a. The name and address of the Alabama resident who  
6 placed the order.

7                   b. For each completed shipment, evidence of  
8 signature by an individual of age 21 or older.

9                   c. The name and license number of the common or  
10 permit carrier engaged in the shipment.

11                   d. For each shipment by a wine fulfillment center  
12 licensee on behalf of the direct wine shipper, the name and  
13 license number of the wine fulfillment center licensee engaged  
14 in the shipment.

15                   e. The date of shipment.

16                   f. The carrier tracking number.

17                   g. The quantity of wine in the shipment.

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

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

24                   (8) Shall obtain from the customer an attestation  
25 that he or she is at least 21 years of age at the time the  
26 order is placed.

1           (9) Shall be deemed to have consented to the  
2 jurisdiction of the board or any law enforcement agency and  
3 the Alabama courts concerning enforcement of this section and  
4 any related laws or administrative rules.

5           (d) A direct wine shipper licensee may renew its  
6 license with the board by paying annually a renewal fee of one  
7 hundred fifty dollars (\$150) and providing the board a true  
8 copy of its current manufacturer license issued by the board  
9 and its federal basic wine manufacturing permit.

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

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

18          (g) Shipments of wine direct to consumers in Alabama  
19 from persons who do not possess a current direct wine shipper  
20 license pursuant to this section are prohibited. Any person  
21 that violates this section is guilty of a Class C misdemeanor  
22 and shall also be subject to a civil penalty imposed by the  
23 board by administrative proceedings that apply to alcoholic  
24 beverage licenses, as follows:

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

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

3           (3) For a third or any subsequent violation, a civil  
4 penalty not to exceed six thousand dollars (\$6,000).

5           (h) Any fines or fees received by the board under  
6 this section, including, but not limited to, the direct wine  
7 shipper licensee fee, shall be used by the board in order to  
8 perform its regulatory duties under Title 28.

9           (i) A direct wine shipper licensee may not avoid  
10 liability under this section by subcontracting with a third  
11 party to perform its obligations required pursuant to this  
12 section.

13           (j) For purposes of this chapter, the following  
14 terms shall have the following meanings:

15           (1) DIRECT WINE SHIPPER. A person in possession of a  
16 current, valid direct wine shipper license.

17           (2) DIRECT WINE SHIPPER LICENSE. A license issued by  
18 the board that authorizes the licensee to ship wine or  
19 contract for the shipment of wine from a manufacturer to an  
20 Alabama resident pursuant to Sections 28-3A-6.1 and 28-3A-6.2.

21           (3) SHIPMENT. The transportation of wine from a  
22 manufacturer to an Alabama resident as provided in this  
23 chapter.

24           (4) WINE FULFILLMENT CENTER. A premises that  
25 operates as a bailment warehouse for wine permitted to be sold  
26 directly by a direct wine shipper licensee to an Alabama  
27 resident pursuant to Sections 28-3A-6.1 and 28-3A-6.2.

1                   (5) WINE FULFILLMENT CENTER LICENSE. A license  
2 issued by the board that authorizes a licensed wine  
3 fulfillment center to ship wine to an Alabama resident on  
4 behalf of a direct wine shipper pursuant to Sections 28-3A-6.1  
5 and 28-3A-6.2.

6                   §28-3A-6.2.

7                   (a) (1) Any person who is not a common or permit  
8 carrier and who does not hold a direct wine shipper,  
9 wholesaler, retailer, manufacturer, or importer license issued  
10 by the board and who is not owned or controlled by a common or  
11 permit carrier or a direct wine shipper, wholesaler, retailer,  
12 manufacturer, or importer licensee of the board may obtain a  
13 wine fulfillment center license from the board as provided in  
14 this section. A wine fulfillment center licensee, subject to  
15 compliance with all terms and provisions of this section and  
16 Section 28-3A-6.1, may contract with a common or permit  
17 carrier for the shipment of unopened containers of wine on  
18 behalf of a direct wine shipper licensee directly to an  
19 Alabama resident who is at least 21 years of age, for personal  
20 use by the individual and not for resale.

21                   (2) A person shall obtain a separate wine  
22 fulfillment center license for each physical premises that is  
23 to be used as a wine fulfillment center before shipping wine  
24 to any Alabama resident from that premises, and shall pay an  
25 annual license fee of five hundred dollars (\$500), plus an  
26 additional one hundred dollars (\$100) for each additional

1 premises from which shipments to Alabama residents will be  
2 made.

3 (3) The holder of a wine fulfillment center license  
4 may only provide logistics services of warehousing, packaging,  
5 order fulfillment, and shipment of wine for a direct wine  
6 shipper licensee for which the wine fulfillment center  
7 licensee is the bailee of the wine. Wine held in bailment by a  
8 wine fulfillment center licensee shall remain the property of  
9 the direct wine shipper licensee until loaded on conveyance  
10 for direct shipment to an Alabama resident.

11 (4) A wine fulfillment center licensee shall not  
12 ship wine into or within the state from, or on behalf of, any  
13 of the following:

14 a. An unlicensed direct shipper of wine, either  
15 in-state or out-of-state.

16 b. A retailer licensed by the board.

17 c. An out-of-state retailer.

18 d. A person that does not hold a direct wine shipper  
19 license.

20 (b) A wine fulfillment center license applicant  
21 shall provide all of the following information to the board as  
22 part of its application:

23 (1) The precise location or locations at which the  
24 licensee will engage in logistics services for wine to be  
25 shipped into the state.

26 (2) Any other information required by the board.



1 (c) A wine fulfillment center licensee shall do all  
2 of the following:

3 (1) Annually renew its wine fulfillment center  
4 license in a manner as established by rule of the board and  
5 pay any initial and annual license fees.

6 (2) Enter into a contract with a direct wine shipper  
7 licensee designating the wine fulfillment center licensee as  
8 the agent of the direct wine shipper licensee for purposes of  
9 this act. A wine fulfillment center licensee may not avoid  
10 liability under this section by subcontracting with a third  
11 party to perform its obligations pursuant to this section.

12 (3) Maintain a compliance program documenting that  
13 all wine shipped by each direct wine shipper licensee through  
14 the wine fulfillment center licensee satisfies the  
15 requirements set forth in subdivisions (c) (1) and (c) (2) of  
16 Section 28-3A-6.1.

17 (4) Make all commercially reasonable efforts to  
18 verify the validity of each direct wine shipper license prior  
19 to making any shipment on behalf of the direct wine shipper  
20 licensee.

21 (5) Ensure all containers of wine shipped by the  
22 wine fulfillment center licensee to an Alabama resident are  
23 conspicuously labeled with the following words: "CONTAINS  
24 ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR  
25 DELIVERY."

26 (6) Report to the board on a quarterly basis in a  
27 manner prescribed by the board all of the following

1 information for each wine shipment into the state pursuant to  
2 this section:

3 a. The name, address, and license number of the  
4 direct wine shipper licensee and the point of origin of  
5 shipment from which the wine fulfillment center licensee  
6 received the wine, if different from the address of the direct  
7 wine shipper licensee.

8 b. The name and address of the Alabama resident who  
9 placed the order.

10 c. For each completed shipment, evidence of  
11 signature by an individual of age 21 or older.

12 d. The name and license number of the common or  
13 permit carrier engaged in the shipment.

14 e. The date of shipment.

15 f. The carrier tracking number.

16 g. The quantity of wine in the shipment.

17 (7) Maintain for a minimum of three years from the  
18 date of receipt from a direct wine shipper licensee or the  
19 date of shipment to an Alabama resident, as applicable, and  
20 permit the board and any of its designees to inspect, verify,  
21 or perform an audit of all of the information listed in  
22 subdivision (6).

23 (8) Upon violation of this act, any provision of  
24 Title 28, or a rule of the board, be subject to a civil  
25 penalty imposed by the board by administrative proceedings  
26 that apply to alcoholic beverage licenses, as follows:

1           (1) For the first violation, a civil penalty not to  
2 exceed five hundred dollars (\$500).

3           (2) For a second violation, a civil penalty not to  
4 exceed three thousand dollars (\$3,000).

5           (3) For a third or any subsequent violation, a civil  
6 penalty not to exceed six thousand dollars (\$6,000).

7           (9) Be deemed to have consented to the jurisdiction  
8 of the board and the other state agencies and the state courts  
9 concerning enforcement of this act.

10           (d) Any fines or fees received by the board under  
11 this section shall be used by the board in order to perform  
12 its regulatory duties under Title 28.

13           (e) The board may adopt rules to implement this  
14 section.

15           Section 4. Chapter 8A, commencing with Section  
16 28-8A-1, is added to Title 28 of the Code of Alabama 1975, to  
17 read as follows:

18           §28-8A-1. Legislative Intent and General Provisions.

19           (a) The Legislature hereby finds and declares that  
20 this chapter is enacted pursuant to the authority granted to  
21 the state under the Twenty-First Amendment to the United  
22 States Constitution, the powers reserved to the state under  
23 the Tenth Amendment to the United States Constitution, and the  
24 inherent powers of the state under the Constitution of Alabama  
25 of 1901, in order to regulate the traffic of alcoholic  
26 beverages and to substitute the regulations and oversight  
27 established in this act for the application of federal and

1 state antitrust laws that otherwise would apply to any  
2 potential anti-competitive effects of this title. For the  
3 avoidance of doubt, the intent of the Legislature is to  
4 maintain the uniform three-tier system of control over the  
5 sale, purchase, taxation, transportation, manufacture,  
6 consumption, and possession of alcoholic beverages in the  
7 state to promote the health, safety, and welfare of residents  
8 of this state by, among other purposes, ensuring the state  
9 shall be able to register, audit, inspect, seize, recall and  
10 test alcoholic beverages shipped into, distributed, and sold  
11 throughout this state; and this expression of the policy and  
12 intent of the Legislature is intended to satisfy the clear  
13 articulation test for state action immunity as has been  
14 established by the United States Supreme Court in California  
15 Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., et al.

16 (b) If any provision of this chapter, or its  
17 application to any person or circumstance, is determined by a  
18 court to be invalid or unconstitutional, that provision shall  
19 be stricken and the remaining provisions shall be construed in  
20 accordance with the intent of the Legislature to further limit  
21 rather than expand commerce in alcoholic beverages, including  
22 by prohibiting any commerce in alcoholic beverages not  
23 expressly authorized, and to enhance strict regulatory control  
24 over taxation, distribution, and sale of alcoholic beverages  
25 through the existing uniform system of regulation of alcoholic  
26 beverages.

27 §28-8A-2. Definitions.

1           As used in this chapter, the following terms shall  
2 have the following meanings:

3           (1) AGREEMENT. Any agreement between a wholesaler  
4 and a supplier, whether oral or written, whereby a wholesaler  
5 is granted the right to purchase and sell a brand or brands of  
6 wine sold by a supplier.

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

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

1       testamentary trustee of a deceased individual owning an  
2       ownership interest in a wholesaler. Designated member also  
3       includes a person appointed by the court as the guardian or  
4       conservator of the property of an incapacitated individual  
5       owning an ownership interest in a wholesaler.

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

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

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

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

1 (8) SUBSTANTIAL STOCKHOLDER or SUBSTANTIAL PARTNER.

2 A stockholder of or partner in the wholesaler who owns an  
3 interest of 25 percent or more of the partnership or of the  
4 capital stock of a corporate wholesaler.

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

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

17 (11) WHOLESALER. A wholesaler of wine licensed by  
18 the board.

19 §28-8A-3. Existing Franchise Laws.

20 (a) This chapter does not apply to regulation of  
21 beer franchises.

22 (b) Nothing in this chapter shall be deemed to  
23 repeal or amend wine franchise laws existing on August 1,  
24 2021. This article is intended to provide wine franchise  
25 regulation for counties in which regulation does not exist by  
26 local law, and to leave in effect and unchanged existing local

1 wine franchise laws in Baldwin, Jefferson, Mobile, Montgomery,  
2 and Shelby Counties.

3 §28-8A-4. Territorial Agreements.

4 Each supplier of wine licensed by the board to sell  
5 its wine within the State of Alabama shall sell its wine  
6 through wholesaler licensees of the board and shall grant in  
7 writing to each of its wholesalers an exclusive sales  
8 territory in accordance with Chapter 8.

9 §28-8A-5. Supplier Prohibitions.

10 A supplier shall not do any of the following:

11 (1) Fail to provide each wholesaler of the  
12 supplier's brand or brands with a written agreement which  
13 contains in total the supplier's agreement with each  
14 wholesaler, and designates a specific exclusive sales  
15 territory. Any agreement that is in existence on August 1,  
16 2021, shall be renewed consistent with this chapter, and this  
17 chapter may be incorporated by reference in the agreement. No  
18 part of this chapter shall prevent a supplier from appointing,  
19 one time for a period not to exceed 90 days, a wholesaler to  
20 temporarily service a sales territory not designated to  
21 another wholesaler, until such time as a wholesaler is  
22 appointed by the supplier; and the wholesaler who is  
23 designated to service the sales territory during this period  
24 of temporary service shall not be in violation of this  
25 chapter, and, with respect to the temporary service territory,  
26 shall not have any of the rights provided under Sections  
27 28-8A-7 and 28-8A-9.



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

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

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

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

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

23           (7) Require a wholesaler to assent to any condition,  
24 stipulation, or provision limiting the wholesaler's right to  
25 sell the brand or brands of wine or other products of any  
26 other supplier unless the acquisition of the brand or brands  
27 or products of another supplier would materially impair or

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

7 (8) Require a wholesaler to purchase one or more  
8 brands of wine or other products in order for the wholesaler  
9 to purchase another brand or brands of wine for any reason. If  
10 the wholesaler has agreed to distribute a brand or brands  
11 before August 1, 2021, the wholesaler shall continue to  
12 distribute that brand or brands, in conformance with this  
13 chapter.

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

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

20 (11) Require a wholesaler by any means directly to  
21 participate in or contribute to any local or national  
22 advertising fund controlled directly or indirectly by a  
23 supplier.

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

1           (13) Require or prohibit, without just and  
2 reasonable cause, any change in the manager or successor  
3 manager of any wholesaler who has been approved by the  
4 supplier as of or subsequent to August 1, 2021. Should a  
5 wholesaler change an approved manager or successor manager, a  
6 supplier shall not require or prohibit the change unless the  
7 person selected by the wholesaler fails to meet the  
8 nondiscriminatory, material, and reasonable standards and  
9 qualifications for managers of Alabama wholesalers of the  
10 supplier which previously have been consistently applied to  
11 Alabama wholesalers by the supplier. The supplier shall have  
12 the burden of proving that a person fails to meet the  
13 standards and qualifications which are nondiscriminatory,  
14 material, and reasonable and have been consistently applied to  
15 Alabama wholesalers.

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

21           (15) Upon written notice of intent to transfer the  
22 wholesaler's business to a person other than a designated  
23 member, withhold consent to or approval of or unreasonably  
24 delay, for longer than 30 days after receipt of the notice,  
25 the transfer of a wholesaler's business if the proposed  
26 transferee meets the nondiscriminatory, material, and  
27 reasonable qualifications and standards required by the

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

6 (16) Restrict or inhibit, directly or indirectly,  
7 the right of free association among wholesalers for any lawful  
8 purpose.

9 §28-8A-6. Wholesaler Prohibitions.

10 A wholesaler shall not do any of the following:

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

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

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

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

25 §28-8A-7. Supplier and Wholesaler Agreements.

26 (a) Notwithstanding any agreement and except as  
27 otherwise provided for in this chapter, a supplier shall not

1 amend or modify an agreement; cause a wholesaler to resign  
2 from an agreement; or cancel, terminate, fail to renew, or  
3 refuse to continue under an agreement, unless, in any of the  
4 foregoing cases, the supplier has complied with all of the  
5 following:

6 (1) Has satisfied the applicable notice requirements  
7 of subsection (c).

8 (2) Has acted in good faith.

9 (3) Has good cause for the amendment, modification,  
10 cancellation, termination, nonrenewal, discontinuance, or  
11 forced resignation.

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

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

1 discontinuance. The notice shall be by certified mail and  
2 shall contain all of the following:

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

5 (2) A statement of the reason for the amendment,  
6 modification, termination, cancellation, nonrenewal, or  
7 discontinuance.

8 (3) The date on which the amendment, modification,  
9 termination, cancellation, nonrenewal, or discontinuance takes  
10 effect.

11 (d) Notwithstanding any agreement, good cause shall  
12 exist for the purposes of a termination, cancellation,  
13 nonrenewal, or discontinuance under subdivision (3) of  
14 subsection (a) when all of the following occur:

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

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

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

25 (4) The wholesaler was afforded a reasonable  
26 opportunity to assert good faith efforts to comply with the

1 agreement within the time limits as provided for in  
2 subdivision (5).

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

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

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

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

22 (3) The wholesaler, or partner or individual who  
23 owns 10 percent or more of the partnership or stock of a  
24 corporate wholesaler, has been convicted of a felony under  
25 federal or any state law which reasonably may adversely affect  
26 the good will or the interest of the wholesaler or supplier.  
27 However, an existing stockholder or stockholders, or partner



1 or partners, or a designated member or members, subject to  
2 this chapter, shall have the right to purchase the partnership  
3 interest or the stock of the offending partner or stockholder  
4 prior to the conviction of the offending partner or  
5 stockholder and if the sale is completed prior to conviction  
6 this subdivision shall not apply.

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

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

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

25 (3) A wholesaler who has failed to pay for wine  
26 ordered and delivered in accordance with established terms  
27 with the supplier fails to make full payment within two

1 business days after receipt of written notice of the  
2 delinquency and demand for immediate payment from the  
3 supplier.

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

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

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

26 (g) Notwithstanding subsections (a), (c), (e), and  
27 (f), a supplier may terminate, cancel, not renew, or

1       discontinue an agreement upon not less than 30 days' prior  
2       written notice if the supplier discontinues production or  
3       discontinues distribution in this state of all brands sold by  
4       the supplier to the wholesaler. Provided, however, nothing in  
5       this section shall prohibit a supplier from doing either of  
6       the following:

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

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

19              §28-8A-8. Transfers of Wholesaler Business.

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

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

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

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

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

1           (4) The involuntary termination, cancellation,  
2 non-renewal, or discontinuance by a supplier of an agreement  
3 for good cause.

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

20           §28-8A-9.

21           (a) Except as provided for in this chapter, a  
22 supplier that has amended, modified, cancelled, terminated, or  
23 refused to renew any agreement; or has caused a wholesaler to  
24 resign from any agreement; or has interfered with, prevented,  
25 or unreasonably delayed, or where required by this chapter,  
26 has withheld or unreasonably delayed consent to or approval  
27 of, any assignment or transfer of a wholesaler's business,

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

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

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

23 (d) The matter of determining the amount of  
24 compensation, by agreement of the parties, may be submitted to  
25 a three-member arbitration panel consisting of one  
26 representative selected by the supplier but unassociated with  
27 the affected supplier; one wholesaler representative selected

1 by the wholesaler but unassociated with the wholesaler; and an  
2 impartial arbitrator chosen as provided in this section.

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

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

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

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

18 §28-8A-10. No Waiver; Successors and Transferees.

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

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



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

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

12           §28-8A-11. Standards of Conduct.

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

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

1 the court's discretion, reasonable attorney fees incurred by  
2 the supplier as a result of that violation.

3 (c) (1) This chapter imposes upon a supplier the duty  
4 to deal fairly and in good faith with a wholesaler which has  
5 entered into an agreement with the supplier to purchase and  
6 sell a brand or brands of wine sold by the supplier. Except as  
7 otherwise provided in this chapter, a court may award  
8 exemplary or punitive damages, as well as actual damages,  
9 court costs, and reasonable attorney fees to the wholesaler  
10 who has been damaged by the action or the failure to act of  
11 the supplier if the court, upon proof thereof by clear and  
12 convincing evidence as defined in Section 6-11-20, finds that  
13 a supplier has intentionally, consciously, or deliberately  
14 acted in bad faith or failed to act in good faith in any of  
15 the following:

16 a. Effecting an amendment, modification,  
17 termination, cancellation, or nonrenewal of any agreement.

18 b. Unreasonably interfering with, preventing, or  
19 unreasonably delaying the transfer of the wholesaler's  
20 business where approval of the proposed transferee is not  
21 required by this chapter.

22 c. Unreasonably withholding its consent to or  
23 approval of any assignment, transfer, or sale of a  
24 wholesaler's business, where approval of the proposed  
25 transferee is required by this chapter.

26 (2) The actions or failure to act on the part of the  
27 supplier, as listed in subdivision (1), shall also constitute

1 the tort of bad faith, and the amount of any award of punitive  
2 damages and the review thereof by the trial or appellate court  
3 shall be governed by Section 6-11-25.

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

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

12 (f) The remedies provided by this section are  
13 nonexclusive, and nothing contained in this section shall  
14 abolish any cause of action or remedy available to the  
15 supplier or the wholesaler existing on August 1, 2021.

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

21 Section 5. If any provision of this act, or its  
22 application to any person or circumstance, is determined by a  
23 court to be invalid or unconstitutional, that provision shall  
24 be stricken and the remaining provisions shall be construed in  
25 accordance with the intent of the Legislature to further limit  
26 rather than expand commerce in alcoholic beverages, including  
27 by prohibiting any commerce in alcoholic beverages not

1 expressly authorized, and to enhance strict regulatory control  
2 over taxation, distribution, and sale of alcoholic beverages  
3 through the existing uniform system of regulation of alcoholic  
4 beverages.

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

13           Section 7. The Alcoholic Beverage Control Board may  
14 adopt rules to implement this act.

15           Section 8. This act shall become effective on August  
16 1, 2021, following its passage and approval by the Governor,  
17 or its otherwise becoming law.