

1 HB437  
2 212923-4  
3 By Representatives Collins, Wadsworth, Simpson, Ball,  
4 Reynolds, Pettus, Ledbetter, Isbell, Faulkner, Wilcox, Brown  
5 (K), Baker, Meadows, Nordgren, Carns, Greer, Rafferty, Hollis,  
6 Coleman, Lovvorn, McMillan, Shiver, Faust, Wood (D),  
7 Robertson, Sorrells, Stringer, Ellis and Sells  
8 RFD: Economic Development and Tourism  
9 First Read: 23-FEB-21

1  
2 ENROLLED, An Act,

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

1 1901, now appearing as Section 111.05 of the Official  
2 Recompilation of the Constitution of Alabama of 1901, as  
3 amended.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. The Legislature hereby finds and declares  
6 that this act 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

1 articulation test for state action immunity as has been  
2 established by the United States Supreme Court in California  
3 Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., et al.

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

6 "§28-1-4.

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

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

21 "(c) A common or permit carrier may ship and  
22 transport shipments of wine to an Alabama resident who is at  
23 least 21 years of age at the direction of a direct wine  
24 shipper licensee, as provided in Sections 28-3A-6.1 and  
25 28-3A-6.2. A common or permit carrier making a shipment as

1 provided in Sections 28-3A-6.1 or 28-3A-6.2 is not required to  
2 maintain in the vehicle or within the possession of the driver  
3 of the vehicle a bill of lading, consignment, or any other  
4 documentary evidence of the cargo being transported other than  
5 information available on the package shipping label.

6 "(1) A common or permit carrier that ships and  
7 transports wine to a resident of the state shall make shipment  
8 as provided in Sections 28-3A-6.1 and 28-3A-6.2, shall confirm  
9 that any individual physically receiving a shipment of wine is  
10 at least 21 years of age, and shall require the individual's  
11 signature before releasing the shipment to that individual.  
12 Any failure by a common or permit carrier, upon receipt of the  
13 shipment, to verify the age of the individual receiving the  
14 wine may result in the suspension of the common or permit  
15 carrier's license to operate in the state or the imposition of  
16 any other penalty the relevant licensing authority in the  
17 state is authorized to impose.

18 "(2) A common or permit carrier that ships and  
19 transports wine to a resident of the state shall make shipment  
20 as provided in Sections 28-3A-6.1 and 28-3A-6.2, shall  
21 maintain a copy of the signature of the individual who  
22 physically received the shipment for at least three years  
23 following the date of completion of that shipment, and, upon  
24 request, shall provide a copy of that signature to the Tax and  
25 Trade Practices Division of the board. Failure by a common or

1 permit carrier to maintain a copy of the signature of the  
2 individual receiving the wine pursuant to this section, or  
3 failure to provide a copy of that signature to the board or  
4 the Department of Revenue upon request, may result in the  
5 suspension of the common or permit carrier's license to  
6 operate in the state or the imposition of any other penalty  
7 the relevant licensing authority in the state is authorized to  
8 impose.

9 "(d) A common or permit carrier that ships and  
10 transports wine to a resident of the state shall make shipment  
11 as provided in Sections 28-3A-6.1 and 28-3A-6.2 and shall file  
12 quarterly reports with the Tax and Trade Practices Division of  
13 the board of all wine shipments during the reporting period  
14 that report all of the following with regard to each shipment:

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

17 "(2) The weight of the shipment.

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

20 "(4) A unique tracking number.

21 "(5) The date of delivery.

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

1           "(f) A willful failure by a common or permit carrier  
2 to comply with the reporting requirements in this section  
3 which continues for more than 30 days after receiving notice  
4 by the board or Department of Revenue of the failure may  
5 result in the suspension of the common or permit carrier's  
6 license to operate in the state or the imposition of any other  
7 penalty the relevant licensing authority in the state is  
8 authorized to impose.

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

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

15           Section 3. Sections 28-3A-6.1 and 28-3A-6.2 are  
16 added to the Code of Alabama 1975, to read as follows:

17           §28-3A-6.1. Direct shipment of wine by a  
18 manufacturer.

19           (a) Any person licensed ~~by the board~~ as a wine  
20 manufacturer who holds a federal basic wine manufacturing  
21 permit pursuant to the Federal Alcohol Administration Act, 27  
22 U.S.C. § 201 et seq., and who is in the business of  
23 manufacturing and bottling wine may obtain a direct wine  
24 shipper license from the board as provided in this section. A  
25 direct wine shipper licensee may ship annually up to 12 cases

1 of unopened containers of wine to any one Alabama resident in  
2 a 12-month period, each case not exceeding nine liters of  
3 wine. A direct wine shipper licensee may ship only wine (i)  
4 produced by the direct wine shipper licensee; (ii) produced by  
5 or for the direct wine shipper licensee under a written  
6 contract, existing at the time of shipment, with another  
7 manufacturer of wine that holds a federal basic wine  
8 manufacturing permit pursuant to the Federal Alcohol  
9 Administration Act, 27 U.S.C. § 201 et seq., and who is in the  
10 business of manufacturing and bottling wine; or (iii)  
11 exclusively produced and bottled for the direct wine shipper  
12 licensee by a manufacturer of wine that holds a federal basic  
13 wine manufacturing permit pursuant to the Federal Alcohol  
14 Administration Act, 27 U.S.C. § 201 et seq., and who is in the  
15 business of manufacturing and bottling wine. The wine shall be  
16 shipped and transported by common or permit carrier directly  
17 from the direct wine shipper licensee's licensed premises, or  
18 from the direct wine shipper licensee through a wine  
19 fulfillment center as provided in Section 28-3A-6.2, to a  
20 resident of Alabama who is at least 21 years of age for the  
21 resident's personal use and not for resale.

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

25 (1) File an application with the board.



1           (2) Pay ~~a filing~~ an application fee of two hundred  
2 dollars (\$200).

3           (3) Provide to the board a true copy of its current  
4 wine manufacturer license issued by the board or issued by the  
5 state in which it manufactures wine and a true copy of its  
6 federal basic wine manufacturing permit.

7           (c) A direct wine shipper licensee:

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

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

12           a. Any premises licensed by the board.

13           b. A public or private elementary, secondary, or  
14 post-secondary educational school, including any dormitory,  
15 housing, or common space located on the campus of any  
16 elementary, secondary or post-secondary educational school.

17           c. A prison, reformatory, or other correctional  
18 facility.

19           d. A hospital or other healthcare facility,  
20 including, but not limited to, an acute care, addiction or  
21 substance abuse, or mental or psychiatric care facility.

22           e. A locker, a mailbox, a storage facility, or a  
23 package shipping or similar service business.

24           f. An address that is not a permanent street  
25 address.

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

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

7           b. Has the exclusive right to sell the wine in the  
8 United States under a written contract, existing at time of  
9 shipment, with the manufacturer of wine that holds a federal  
10 basic wine manufacturing permit pursuant to the Federal  
11 Alcohol Administration Act, 27 U.S.C. § 201 et seq., and is  
12 the owner of the Certificate of Label Approval issued by the  
13 Alcohol and Tobacco Tax and Trade Bureau.

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

18           (5) Shall report to the board on a quarterly basis  
19 in a manner prescribed by the board all of the following  
20 information for each wine shipment into the state pursuant to  
21 this section:

22           a. The name and address of the Alabama resident who  
23 placed the order.

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

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

3           d. For each shipment by a wine fulfillment center  
4 licensee on behalf of the direct wine shipper, the name and  
5 license number of the wine fulfillment center licensee engaged  
6 in the shipment.

7           e. The date of shipment.

8           f. The carrier tracking number.

9           g. The quantity of wine in the shipment.

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

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

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

19          (9) Shall be deemed to have consented to the  
20 jurisdiction of the board or any law enforcement agency and  
21 the Alabama courts concerning enforcement of this section and  
22 any related laws or administrative rules.

23          (d) A direct wine shipper licensee may renew its  
24 license with the board by paying annually a renewal fee of one  
25 hundred fifty dollars (\$150) and providing the board a true

1 copy of its current manufacturer license issued by the board  
2 and its federal basic wine manufacturing permit.

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

5 (f) The board may enforce the requirements of this  
6 section to suspend or revoke a direct wine shipper license by  
7 the same administrative proceedings that apply to alcoholic  
8 beverage licenses, and the board may accept payment of a fine  
9 in lieu of suspension or revocation. Payments of fines shall  
10 be determined by rule adopted by the board.

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

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

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

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

24 (h) Any fines or fees received by the board under  
25 this section, including, but not limited to, the direct wine

1 shipper licensee fee, shall be used by the board in order to  
2 perform its regulatory duties under Title 28.

3 (i) A direct wine shipper licensee may not avoid  
4 liability under this section by subcontracting with a third  
5 party to perform its obligations required pursuant to this  
6 section.

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

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

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

15 (3) SHIPMENT. The transportation of wine from a  
16 manufacturer to an Alabama resident as provided in this  
17 chapter.

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

22 (5) WINE FULFILLMENT CENTER LICENSE. A license  
23 issued by the board that authorizes a licensed wine  
24 fulfillment center to ship wine to an Alabama resident on

1       behalf of a direct wine shipper pursuant to Sections 28-3A-6.1  
2       and 28-3A-6.2.

3               §28-3A-6.2.

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

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

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

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

12           a. An unlicensed direct shipper of wine, either  
13 in-state or out-of-state.

14           b. A retailer licensed by the board.

15           c. An out-of-state retailer.

16           d. A person that does not hold a direct wine shipper  
17 license.

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

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

24           (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."



1           (6) Report to the board on a quarterly basis in a  
2 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, address, and license number of the  
6 direct wine shipper licensee and the point of origin of  
7 shipment from which the wine fulfillment center licensee  
8 received the wine, if different from the address of the direct  
9 wine shipper licensee.

10           b. The name and address of the Alabama resident who  
11 placed the order.

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

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

16           e. The date of shipment.

17           f. The carrier tracking number.

18           g. The quantity of wine in the shipment.

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

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

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

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

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

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

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

17           (e) The board may adopt rules to implement this  
18 section.

19           Section 4. Chapter 8A, commencing with Section  
20 28-8A-1, is added to Title 28 of the Code of Alabama 1975, to  
21 read as follows:

22           §28-8A-1. Legislative Intent and General Provisions.

23           (a) The Legislature hereby finds and declares that  
24 this chapter is enacted pursuant to the authority granted to  
25 the state under the Twenty-First Amendment to the United

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

22 (b) If any provision of this chapter, or its  
23 application to any person or circumstance, is determined by a  
24 court to be invalid or unconstitutional, that provision shall  
25 be stricken and the remaining provisions shall be construed in

1 accordance with the intent of the Legislature to further limit  
2 rather than expand commerce in alcoholic beverages, including  
3 by prohibiting any commerce in alcoholic beverages not  
4 expressly authorized, and to enhance strict regulatory control  
5 over taxation, distribution, and sale of alcoholic beverages  
6 through the existing uniform system of regulation of alcoholic  
7 beverages.

8 §28-8A-2. Definitions.

9 As used in this chapter, the following terms shall  
10 have the following meanings:

11 (1) AGREEMENT. Any agreement between a wholesaler  
12 and a supplier, whether oral or written, whereby a wholesaler  
13 is granted the right to purchase and sell a brand or brands of  
14 wine sold by a supplier.

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

23 (3) DESIGNATED MEMBER. The spouse, child,  
24 grandchild, parent, brother, or sister of a deceased  
25 individual who owned an interest, including a controlling

1 interest, in a wholesaler; or any person who inherits the  
2 deceased individual's ownership interest in the wholesaler  
3 under the terms of the deceased individual's will, or under  
4 the laws of intestate succession of this state; or any person  
5 who or entity which has otherwise by designation in writing by  
6 the deceased individual, succeeded the deceased individual in  
7 the wholesaler's business, or has succeeded to the deceased  
8 individual's ownership interest in the wholesaler pursuant to  
9 a written contract or instrument; and also includes the  
10 appointed and qualified personal representative and the  
11 testamentary trustee of a deceased individual owning an  
12 ownership interest in a wholesaler. Designated member also  
13 includes a person appointed by the court as the guardian or  
14 conservator of the property of an incapacitated individual  
15 owning an ownership interest in a wholesaler.

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

20 (5) REASONABLE QUALIFICATIONS. The standard of the  
21 reasonable criteria established and consistently used by the  
22 respective supplier for Alabama wholesalers that entered into,  
23 continued, or renewed an agreement with the supplier during a  
24 period of 24 months prior to the proposed transfer of the  
25 wholesaler's business, or for Alabama wholesalers who have

1 changed managers or designated managers during a period of 24  
2 months prior to the proposed change in manager or successor  
3 manager of the wholesaler's business.

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

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

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

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

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

1 ownership of any other entity owning or controlling the  
2 wholesaler.

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

5 §28-8A-3. Existing Franchise Laws.

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

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

15 §28-8A-4. Territorial Agreements.

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

21 §28-8A-5. Supplier Prohibitions.

22 A supplier shall not do any of the following:

23 (1) Fail to provide each wholesaler of the  
24 supplier's brand or brands with a written agreement which  
25 contains in total the supplier's agreement with each

1 wholesaler, and designates a specific exclusive sales  
2 territory. Any agreement that is in existence on August 1,  
3 2021, shall be renewed consistent with this chapter, and this  
4 chapter may be incorporated by reference in the agreement. No  
5 part of this chapter shall prevent a supplier from appointing,  
6 one time for a period not to exceed 90 days, a wholesaler to  
7 temporarily service a sales territory not designated to  
8 another wholesaler, until such time as a wholesaler is  
9 appointed by the supplier; and the wholesaler who is  
10 designated to service the sales territory during this period  
11 of temporary service shall not be in violation of this  
12 chapter, and, with respect to the temporary service territory,  
13 shall not have any of the rights provided under Sections  
14 28-8A-7 and 28-8A-9.

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

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

22 (4) Coerce, or attempt to coerce, any wholesaler to  
23 accept delivery of any wine or other commodity which has not  
24 been ordered by the wholesaler. Provided, however, a supplier  
25 may impose reasonable inventory requirements upon a wholesaler



1 if the requirements are made in good faith and are generally  
2 applied to other similarly situated wholesalers having an  
3 agreement with the supplier.

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

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

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

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

1 the wholesaler has agreed to distribute a brand or brands  
2 before August 1, 2021, the wholesaler shall continue to  
3 distribute that brand or brands, in conformance with this  
4 chapter.

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

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

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

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

19 (13) Require or prohibit, without just and  
20 reasonable cause, any change in the manager or successor  
21 manager of any wholesaler who has been approved by the  
22 supplier as of or subsequent to August 1, 2021. Should a  
23 wholesaler change an approved manager or successor manager, a  
24 supplier shall not require or prohibit the change unless the  
25 person selected by the wholesaler fails to meet the

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

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

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

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

4           §28-8A-6. Wholesaler Prohibitions.

5           A wholesaler shall not do any of the following:

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

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

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

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

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

23 (a) Notwithstanding any agreement and except as  
24 otherwise provided for in this chapter, a supplier shall not  
25 amend or modify an agreement; cause a wholesaler to resign

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

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

7 (2) Has acted in good faith.

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

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

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

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

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

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

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

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

24           (3) The wholesaler, or partner or individual who  
25 owns 10 percent or more of the partnership or stock of a



1 corporate wholesaler, has been convicted of a felony under  
2 federal or any state law which reasonably may adversely affect  
3 the good will or the interest of the wholesaler or supplier.  
4 However, an existing stockholder or stockholders, or partner  
5 or partners, or a designated member or members, subject to  
6 this chapter, shall have the right to purchase the partnership  
7 interest or the stock of the offending partner or stockholder  
8 prior to the conviction of the offending partner or  
9 stockholder and if the sale is completed prior to conviction  
10 this subdivision shall not apply.

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

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

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

1 boundaries of the assigned territory and the boundary cannot  
2 be determined by a reading of the description contained in the  
3 agreements between the suppliers and the wholesalers.

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

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

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

23 (6) The wholesaler intentionally ceases, or ceases  
24 for more than a period of 61 days, to carry on business with  
25 respect to any of supplier's brand or brands previously

1 serviced by the wholesaler in its territory designated by the  
2 supplier, unless such cessation is due to force majeure or to  
3 a labor dispute and the wholesaler has made good faith efforts  
4 to overcome such events. This subdivision shall affect only  
5 that brand or brands with respect to which the wholesaler  
6 ceased to carry on business.

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

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

18 (2) Conducting test marketing of a new brand of wine  
19 or of a brand of wine which is not currently being sold in  
20 this state, if the supplier has notified the board in writing  
21 of its plan to test market. The notice shall describe the  
22 market area in which the test shall be conducted, the name or  
23 names of the wholesaler or wholesalers who will be selling the  
24 wine, the name or names of the brand of wine being tested, and

1 the period of time not to exceed 18 months during which the  
2 testing will take place.

3 §28-8A-8. Transfers of Wholesaler Business.

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

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

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

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

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

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

1 the other party declaring its intention to proceed with  
2 arbitration. Arbitration shall proceed only by mutual  
3 agreement by both parties.

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

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

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

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

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

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

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



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

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

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

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

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

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

5           §28-8A-11. Standards of Conduct.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 over taxation, distribution, and sale of alcoholic beverages  
2 through the existing uniform system of regulation of alcoholic  
3 beverages.

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

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

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

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 01-APR-21, as amended.

Jeff Woodard  
Clerk

Senate	<hr/> 29-APR-21 <hr/>	Amended and Passed
House	<hr/> 29-APR-21 <hr/>	Concurred in Senate Amendment