

1 HB671
2 152660-4
3 By Representative Scott (N & P)
4 RFD: Jefferson County Legislation
5 First Read: 24-APR-13

1
2 ENROLLED, An Act,

3 Relating to Jefferson County, relating to alcoholic
4 beverages and the sale of wine in Jefferson County, to create
5 the Jefferson County Wine Franchise Jobs Protection Act; to
6 provide for business relations between suppliers and
7 wholesalers of wine to preserve and expand jobs in Jefferson
8 County in the wine industry; to require written agreements
9 setting forth in full the supplier's agreement with the
10 wholesaler, and designating a specific exclusive sales
11 territory; to provide for prohibited acts by the supplier and
12 by the wholesaler; to provide for conditions of amendment,
13 modification, resignation, cancellation, termination, failure
14 to renew, or refusal to continue the agreement; to provide for
15 the transfer of wholesaler's business, for the establishment
16 of nondiscriminatory, material, and reasonable qualifications
17 and standards by suppliers, and prohibit interference with the
18 transfer upon compliance with those standards; to provide for
19 reasonable compensation upon supplier's violation of the act,
20 including a method of voluntary arbitration; to provide for
21 civil actions for violations, damages, and venue; to provide
22 for the burden of proof; to provide that the wholesaler may
23 not waive rights set forth in this act; to provide that the
24 act relates to existing and future agreements with wholesalers
25 and suppliers as well as their successors and transferees; to

1 provide that this act is cumulative; and to provide for an
2 effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. This act shall be known as the "Jefferson
5 County Wine Franchise Jobs Protection Act."

6 Section 2. This act shall be operative only in
7 Jefferson County.

8 Section 3. The legislative intent and purpose of
9 this act is to provide a structure for the business relations
10 between a wholesaler and a supplier of wine in Jefferson
11 County. Regulation in this area within the county is
12 considered necessary for the following reasons:

13 (a) To maintain stability and healthy competition in
14 the wine industry in Jefferson County.

15 (b) To provide and maintain a sound, stable, and
16 viable 3-tier system of distribution of wine to the public in
17 Jefferson County.

18 (c) To promote the public health, safety, and
19 welfare.

20 (d) To preserve and expand jobs in Jefferson County
21 in the wine industry.

22 Section 4. (a) The following words or phrases, or
23 the plural thereof, whenever they appear in this act, unless
24 the context clearly requires otherwise, shall have the meaning
25 ascribed to them in this section:

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

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

13 (3) DESIGNATED MEMBER. The spouse, child,
14 grandchild, parent, brother, or sister of a deceased
15 individual who owned an interest, including a controlling
16 interest, in a wholesaler; or any person who inherits the
17 deceased individual's ownership interest in the wholesaler
18 under the terms of the deceased individual's will, or under
19 the laws of intestate succession of this state; or any person
20 who or entity which has otherwise by designation in writing by
21 the deceased individual, succeeded the deceased individual in
22 the wholesaler's business, or has succeeded to the deceased
23 individual's ownership interest in the wholesaler pursuant to
24 a written contract or instrument; and also includes the
25 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 of the Code of Alabama 1975.

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.

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

4 (8) SUBSTANTIAL STOCKHOLDER OR SUBSTANTIAL PARTNER.
5 A stockholder of or partner in the wholesaler who owns an
6 interest of 25 percent or more of the partnership or of the
7 capital stock of a corporate wholesaler.

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

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

20 (11) WHOLESALER. A wholesaler of wine licensed by
21 the board.

22 (b) Other words or phrases used in this act shall
23 have the meanings ascribed to them in Section 28-3-1 of the
24 Code of Alabama 1975, as amended, and any acts amendatory

1 thereof, supplementary thereto, or substituted therefor,
2 unless the context clearly requires otherwise.

3 Section 5. Each supplier of wine licensed by the
4 board authorizing such licensee to sell its wine within the
5 State of Alabama shall sell its wine through wholesaler
6 licensees of the board and shall grant in writing to each of
7 its wholesalers an exclusive sales territory in accordance
8 with Chapter 8, Title 28 of the Code of Alabama 1975, as
9 amended.

10 Section 6. A supplier shall not:

11 (a) 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 which is in existence on the
16 effective date of this act shall be renewed consistent with
17 this act; provided, that this act may be incorporated by
18 reference in the agreement. Provided, however, nothing
19 contained herein shall prevent a supplier from appointing, one
20 time for a period not to exceed 90 days, a wholesaler to
21 temporarily service a sales territory not designated to
22 another wholesaler, until such time as a wholesaler is
23 appointed by the supplier; and such wholesaler who is
24 designated to service the sales territory during this period
25 of temporary service shall not be in violation of the act,

1 and, with respect to the temporary service territory, shall
2 not have any of the rights provided under Sections 8 and 10 of
3 this act.

4 (b) Fix, maintain, or establish the price at which a
5 wholesaler shall sell any wine.

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

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

18 (e) Coerce, or attempt to coerce, any wholesaler to
19 accept delivery of any wine, or other commodity ordered by a
20 wholesaler if the order was cancelled by the wholesaler.

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

1 (g) Require a wholesaler to assent to any condition,
2 stipulation, or provision limiting the wholesaler's right to
3 sell the brand or brands of wine or other products of any
4 other supplier unless the acquisition of the brand or brands
5 or products of another supplier would materially impair or
6 adversely affect the wholesaler's quality of service, sales,
7 or ability to compete effectively in representing the brand or
8 brands of the supplier presently being sold by the wholesaler.
9 The supplier shall have the burden of proving that such
10 acquisition of such other brand or brands or products would
11 have such effect.

12 (h) Require a wholesaler to purchase one or more
13 brands of wine or other products in order for the wholesaler
14 to purchase another brand or brands of wine for any reason.
15 Provided, however, the wholesaler has agreed to distribute a
16 brand or brands before the effective date of this act shall
17 continue to distribute the brand or brands in conformance with
18 this act.

19 (i) Request a wholesaler to submit audited profit
20 and loss statements, balance sheets, or financial records as a
21 condition of renewal or continuation of an agreement.

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

1 (k) Require a wholesaler by any means directly to
2 participate in or contribute to any local or national
3 advertising fund controlled directly or indirectly by a
4 supplier.

5 (l) Take any retaliatory action against a wholesaler
6 that files a complaint regarding an alleged violation by the
7 supplier of federal, state, or local law or an administrative
8 rule.

9 (m) Require or prohibit, without just and reasonable
10 cause, any change in the manager or successor manager of any
11 wholesaler who has been approved by the supplier as of or
12 subsequent to the effective date of this act. Should a
13 wholesaler change an approved manager or successor manager, a
14 supplier shall not require or prohibit the change unless the
15 person selected by the wholesaler fails to meet the
16 nondiscriminatory, material, and reasonable standards and
17 qualifications for managers of Alabama wholesalers of the
18 supplier, which standards and qualifications previously have
19 been consistently applied to Alabama wholesalers by the
20 supplier. Provided, however, the supplier shall have the
21 burden of proving that such person fails to meet such
22 standards and qualifications which are nondiscriminatory,
23 material, and reasonable and have been consistently applied to
24 Alabama wholesalers.

1 (n) Upon written notice of intent to transfer the
2 wholesaler's business, interfere with, prevent, or
3 unreasonably delay (not to exceed 30 days) the transfer of the
4 wholesaler's business if the proposed transferee is a
5 designated member.

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

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

22 Section 7. A wholesaler shall not:

23 (a) Fail to devote reasonable efforts and resources,
24 within supplier's designated sales territory, to the sale and

1 distribution of all the supplier's brands of wine which the
2 wholesaler has been granted the right to sell or distribute.

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

1 not be in violation of this act, and, with respect to the
2 temporary service territory, shall not have any of the rights
3 provided under Sections 8 and 10 of this act.

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

14 Section 8. (a) Notwithstanding any agreement and
15 except as otherwise provided for in this act, a supplier shall
16 not amend or modify an agreement; cause a wholesaler to resign
17 from an agreement; or cancel, terminate, fail to renew, or
18 refuse to continue under an agreement, unless, in any of the
19 foregoing cases, the supplier has complied with all of the
20 following:

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

23 (2) Has acted in good faith.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of the offending partner or stockholder and if the sale is
2 completed prior to conviction the provisions of this
3 subdivision (3) shall not apply.

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

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

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

23 (3) A wholesaler who has failed to pay for wine
24 ordered and delivered in accordance with established terms
25 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 has prior to the transfer
15 received from supplier a timely notice of disapproval of the
16 transfer in accordance with this act.

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 labor dispute and the wholesaler has made good faith efforts
23 to overcome such events. Provided, however, this shall affect
24 only that brand or brands with respect to which the wholesaler
25 ceased to carry on business.

1 (g) Notwithstanding subsections (a), (c), (e), and
2 (f) of this section, a supplier may terminate, cancel, not
3 renew, or discontinue an agreement upon not less than 30 days'
4 prior written notice if the supplier discontinues production
5 or discontinues distribution in this state of all brands sold
6 by the supplier to the wholesaler. Provided, however, nothing
7 in this section shall prohibit a supplier from: (1) upon not
8 less than 30 days' notice, discontinuing the distribution of
9 any particular brand of wine; or (2) conducting test marketing
10 of a new brand of wine or of a brand of wine which is not
11 currently being sold in this state, provided that the supplier
12 has notified the board in writing of its plan to test market,
13 which notice shall describe the market area in which the test
14 shall be conducted; the name or names of the wholesaler or
15 wholesalers who will be selling the wine; the name or names of
16 the brand of wine being tested; and the period of time not to
17 exceed 18 months during which the testing will take place.

18 Section 9. (a) Upon written notice of intent to
19 transfer the wholesaler's business, any individual owning or
20 deceased individual who owned an interest in a wholesaler may
21 transfer the wholesaler's business to a designated member, or
22 any other person who meets the nondiscriminatory, material,
23 and reasonable qualifications and standards required by the
24 supplier for Alabama wholesalers. The consent or approval of
25 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 such nondiscriminatory, material, and reasonable
6 qualifications and standards. Provided, however, the supplier
7 shall have the burden of proving that the proposed transferee
8 fails to meet such qualifications and standards which are
9 nondiscriminatory, material, and reasonable and consistently
10 applied to Alabama wholesalers by the supplier. Provided, such
11 designated member or transferee shall in no event be qualified
12 as a transferee without the prior written approval or consent
13 of the supplier, where such proposed transferee shall have
14 been involved in any 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; or

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; or

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; or

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 may in good faith and for good cause
13 related to the reasonable qualifications 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 Section 10. (a) Except as provided for in this act,
21 a supplier that has amended, modified, cancelled, terminated,
22 or refused to renew any agreement; or has caused a wholesaler
23 to resign from any agreement; or has interfered with,
24 prevented, or unreasonably delayed, or where required by this
25 act, has withheld or unreasonably delayed consent to or

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

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

18 (c) Not more than 10 business days after the notice
19 to enter into arbitration has been delivered, the other party
20 shall send written notice to the requesting party declaring
21 its intention either to proceed or not to proceed with
22 arbitration. Should the other party fail to respond within the
23 10 business days, it shall be conclusively presumed that said
24 party shall have agreed to arbitration.

1 (d) The matter of determining the amount of
2 compensation may, by agreement of the parties, be submitted to
3 a three-member arbitration panel consisting of one
4 representative selected by the supplier but unassociated with
5 the affected supplier; one wholesaler representative selected
6 by the wholesaler but unassociated with the wholesaler; and an
7 impartial arbitrator chosen as provided in this Section.

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

24 (f) Not more than 30 days after the final selection
25 of the arbitration panel is made, the arbitration panel shall

1 convene to decide the dispute. The panel shall conclude the
2 arbitration within 20 days after the arbitration panel
3 convenes and shall render a decision by majority vote of the
4 arbitrators within 20 days from the conclusion of the
5 arbitration. The award of the arbitration panel shall be final
6 and binding on the parties as to the amount of compensation
7 for the diminished value.

8 (g) The cost of the impartial arbitrator, the
9 stenographer, and the meeting site shall be equally divided
10 between the wholesaler and the supplier. All other costs shall
11 be paid by the party incurring them.

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

1 Section 11. A wholesaler may not waive any of the
2 rights granted in any provision of this act and the provisions
3 of any agreement which would have such an effect shall be null
4 and void. Nothing in this act shall be construed to limit or
5 prohibit good faith dispute settlements voluntarily entered
6 into by the parties.

7 Section 12. (a) This act shall apply to agreements
8 in existence on the effective date of this act, as well as
9 agreements entered into or renewed after the effective date of
10 this act.

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

18 (c) A successor to a supplier that continues in
19 business as a supplier shall be bound by all terms and
20 conditions of each agreement of the supplier in effect on the
21 date of succession.

22 Section 13. (a) If a supplier engages in conduct
23 prohibited under this act, a wholesaler with which the
24 supplier has an agreement may maintain a civil action against
25 the supplier to recover actual damages reasonably incurred as

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

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

14 (c) This act imposes upon a supplier the duty to
15 deal fairly and in good faith with a wholesaler which has
16 entered into an agreement with the supplier to purchase and
17 sell a brand or brands of wine sold by the supplier. Except as
18 otherwise provided in this act, if a court finds that a
19 supplier has intentionally, consciously, or deliberately acted
20 or failed to act which was not in good faith or was in bad
21 faith either in (1) effecting an amendment, modification,
22 termination, cancellation, or nonrenewal of any agreement; or
23 (2) unreasonably interfering with, preventing, or unreasonably
24 delaying the transfer of the wholesaler's business where
25 approval of the proposed transferee is not required by this

1 act; or (3) unreasonably withholding its consent to or
2 approval of any assignment, transfer, or sale of a
3 wholesaler's business, where approval of the proposed
4 transferee is required by this act; it may, upon proof thereof
5 by clear and convincing evidence as defined in Section 6-11-20
6 of the Code of Alabama 1975, award exemplary or punitive
7 damages, as well as actual damages, court costs, and
8 reasonable attorney fees to the wholesaler who has been
9 damaged by the action or the failure to act of the supplier.
10 Such actions or failure to act on the part of the supplier
11 shall constitute the tort of bad faith, and the amount of any
12 award of punitive damages and the review thereof by the trial
13 or appellate court shall be governed by Section 6-11-25 of the
14 Code of Alabama 1975.

15 (d) A supplier or wholesaler may bring an action for
16 declaratory judgment for determination of any controversy
17 arising pursuant to this act.

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

23 (f) The remedies provided by this section are
24 nonexclusive, and nothing contained herein shall abolish any

1 cause of action or remedy available to the supplier or the
2 wholesaler existing on the effective date of this act.

3 (g) Any legal action taken under this act, or in a
4 dispute arising out of an agreement or breach thereof, or over
5 the provisions of an agreement shall be filed in either
6 Jefferson County Circuit Court or the United States District
7 Court for the Northern District of Alabama.

8 Section 14. The provisions of this act are
9 severable. If any part of this act is declared invalid or
10 unconstitutional, such declaration shall not affect the part
11 which remains.

12 Section 15. This act is cumulative, and supplements
13 and is in addition to Sections 28-8-1 to 28-8-8, inclusive,
14 Code of Alabama 1975.

15 Section 16. All laws or parts of laws which conflict
16 with this act are repealed.

17 Section 17. This act shall become effective
18 immediately following its passage and approval by the
19 Governor, or its otherwise becoming law.

