

1 SB166  
2 197598-1  
3 By Senator Ward  
4 RFD: Governmental Affairs  
5 First Read: 21-MAR-19

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8 SYNOPSIS: Under existing law, a beer supplier is  
9 required to sell its beer to a beer wholesaler  
10 through an exclusive franchise contract. Existing  
11 law establishes parameters for these franchise  
12 contracts, including provisions that prohibit  
13 certain actions by suppliers and wholesalers  
14 against the other party.

15 This bill would revise the list of  
16 prohibited acts that a supplier may take against a  
17 wholesaler.

18 This bill would also establish when  
19 possession of the beer is transferred from a  
20 supplier to a wholesaler.

21  
22 A BILL  
23 TO BE ENTITLED  
24 AN ACT

25  
26 Relating to beer suppliers and wholesalers; to amend  
27 Section 28-9-4, Code of Alabama 1975, and to add Section

1 28-9-5.1, Code of Alabama 1975; to prohibit a beer supplier  
2 from taking certain actions against the wholesaler with whom a  
3 supplier contracts to distribute its beer; and to establish  
4 when possession and risk of loss is transferred from a beer  
5 supplier to a beer wholesaler.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Section 28-9-4, Code of Alabama 1975, is  
8 amended to read as follows:

9 "§28-9-4.

10 "A supplier is prohibited from doing the following:

11 "(1) Fail to provide each wholesaler of the  
12 supplier's brand or brands with a written agreement which  
13 contains in total the supplier's agreement with each  
14 wholesaler, and designates a specific exclusive sales  
15 territory. Any agreement which is in existence on March 3,  
16 1988, shall be renewed consistent with this chapter; provided,  
17 that this chapter may be incorporated by reference in the  
18 agreement. Provided, however, nothing contained herein shall  
19 prevent a supplier from appointing, one time for a period not  
20 to exceed 90 days, a wholesaler to temporarily service a sales  
21 territory not designated to another wholesaler, until such  
22 time as a wholesaler is appointed by the supplier; and such  
23 wholesaler who is designated to service the sales territory  
24 during this period of temporary service shall not be in  
25 violation of the chapter, and, with respect to the temporary  
26 service territory, shall not have any of the rights provided  
27 under Sections 28-9-6 and 28-9-8.

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

3           "(3) Adjust the price at which the supplier sells  
4 beer to a wholesaler or the discount reimbursement based on  
5 the price at which a wholesaler resells beer to a retailer.  
6 Notwithstanding the foregoing, a supplier may set its own  
7 price so long as any price adjustment is based on factors  
8 other than a wholesaler's increase in the price it charges to  
9 a retailer, and the price adjustment is not intended to  
10 otherwise coerce illegal behavior under this section.

11           "(4) Fix, maintain, establish, or dictate the hours  
12 of operation for a wholesaler, or fine or otherwise penalize a  
13 wholesaler based on the wholesaler's chosen hours of  
14 operation.

15           "~~(3)~~ (5) Enter into an additional agreement with any  
16 other wholesaler for, or to sell to any other wholesaler, the  
17 same brand or brands of beer in the same territory or any  
18 portion thereof, or to sell directly to any retailer in this  
19 state.

20           "~~(4)~~ (6) Coerce, or attempt to coerce, Require any  
21 wholesaler to accept delivery of any beer, or other commodity  
22 which has not been ordered by the wholesaler. Provided,  
23 however, a supplier may impose reasonable inventory  
24 requirements upon a wholesaler if the requirements are made in  
25 good faith and are generally applied to other similarly  
26 situated wholesalers having an agreement with the supplier.  
27 For purposes of this subdivision, wholesaler sales forecasts

1 do not constitute orders but may be used by suppliers for  
2 demand planning and to create suggested orders, which may only  
3 be shipped if agreed upon by the wholesaler. Each individual  
4 shipment must be agreed upon by the wholesaler prior to  
5 shipment.

6 ~~"(5)(7) Coerce, or attempt to coerce,~~ Require any  
7 wholesaler to accept delivery of any beer, or other commodity  
8 ordered by a wholesaler if the order was canceled by the  
9 wholesaler.

10 ~~"(6)(8) Coerce, or attempt to coerce,~~ any wholesaler  
11 to do any illegal act or to violate any law or regulation by  
12 threatening to amend, modify, cancel, terminate, or refuse to  
13 renew any agreement existing between the supplier and  
14 wholesaler.

15 ~~"(7)(9)~~ Require a wholesaler to assent to any  
16 condition, stipulation, or provision limiting the wholesaler's  
17 right to sell the brand or brands of beer or other products of  
18 any other supplier unless the acquisition of the brand or  
19 brands or products of another supplier would materially impair  
20 or adversely affect the wholesaler's quality of service, sales  
21 or ability to compete effectively in representing the brand or  
22 brands of the supplier presently being sold by the wholesaler;  
23 provided the supplier shall have the burden of proving that  
24 such acquisition of such other brand or brands or products  
25 would have such effect.

26 ~~"(8)(10)~~ Require a wholesaler to purchase one or  
27 more brands of beer or other products in order for the

1 wholesaler to purchase another brand or brands of beer for any  
2 reason. Provided, however, a wholesaler that has agreed to  
3 distribute a brand or brands before March 3, 1988, shall  
4 continue to distribute the brand or brands in conformance with  
5 this chapter.

6 ~~"(9)~~ (11) Request a wholesaler to submit audited  
7 profit and loss statements, balance sheets, or financial  
8 records as a condition of renewal or continuation of an  
9 agreement.

10 ~~"(10)~~ (12) Withhold delivery of beer ordered by a  
11 wholesaler, or change a wholesaler's quota of a brand or  
12 brands if the withholding or change is not made in good faith.

13 ~~"(11)~~ (13) Require a wholesaler by any means, to  
14 directly or indirectly, to participate in or contribute to any  
15 ~~local or national~~ advertising fund ~~controlled directly or~~  
16 ~~indirectly by a supplier~~ or promotional campaign or to require  
17 a wholesaler to satisfy supplier-mandated promotional spending  
18 requirements. This subdivision does not apply to any supplier  
19 described in subdivision (2) of subsection (h) of Section  
20 28-3A-6.

21 "(14) Require a wholesaler to collect and submit  
22 data to a supplier related to percentage of shelf space,  
23 displays, or other retail market place data.

24 "(15) Require a wholesaler to construct, expand, or  
25 remodel a wholesaler's warehouse or office space.

26 ~~"(12)~~ (16) Take any retaliatory action against a  
27 wholesaler that files a complaint regarding an alleged

1 violation by the supplier of federal, state or local law or an  
2 administrative rule.

3 ~~"(13)~~ (17) Require or prohibit, without just and  
4 reasonable cause, any change in the manager or successor  
5 manager of any wholesaler who has been approved by the  
6 supplier as of or subsequent to March 3, 1988. Should a  
7 wholesaler change an approved manager or successor manager, a  
8 supplier shall not require or prohibit the change unless the  
9 person selected by the wholesaler fails to meet the  
10 nondiscriminatory, material and reasonable standards and  
11 qualifications for managers of Alabama wholesalers of the  
12 supplier which standards and qualifications previously have  
13 been consistently applied to Alabama wholesalers by the  
14 supplier. Provided, however, the supplier shall have the  
15 burden of proving that such person fails to meet such  
16 standards and qualifications which are nondiscriminatory,  
17 material and reasonable and have been consistently applied to  
18 Alabama wholesalers.

19 ~~"(14)~~ (18) Upon written notice of intent to transfer  
20 the wholesaler's business, interfere with, prevent, or  
21 unreasonably delay (not to exceed 30 days) the transfer of the  
22 wholesaler's business if the proposed transferee is a  
23 designated member.

24 ~~"(15)~~ (19) Upon written notice of intent to transfer  
25 the wholesaler's business other than to a designated member,  
26 withhold consent to or approval of, or unreasonably delay (not  
27 to exceed 30 days after receipt of all material information

1 reasonably requested) a response to a request by the  
2 wholesaler for, any transfer of a wholesaler's business if the  
3 proposed transferee meets the nondiscriminatory, material and  
4 reasonable qualifications and standards required by the  
5 supplier for Alabama wholesalers. Provided, however, the  
6 supplier shall have the burden of proving that the proposed  
7 transferee does not meet such standards and qualifications  
8 which are nondiscriminatory, material and reasonable and have  
9 been consistently applied to Alabama wholesalers.

10 "~~(16)~~ (20) Restrict or inhibit, directly or  
11 indirectly, the right of free association among wholesalers  
12 for any lawful purpose."

13 Section 2. Section 28-9-5.1 is added to the Code of  
14 Alabama 1975, to read as follows:

15 §28-9-5.1.

16 For purposes of this chapter, possession of beer  
17 occurs when the wholesaler receives the beer at the  
18 wholesaler's place of business during the hours of operation  
19 established by the wholesaler. Risk of loss from destruction  
20 or casualty to the beer is shifted from the supplier to the  
21 wholesaler when the wholesaler receives the beer; however, a  
22 wholesaler shall be deemed to have received beer if the  
23 wholesaler takes possession at the place of business of the  
24 supplier.

25 Section 3. This act shall become effective on the  
26 first day of the third month following its passage and  
27 approval by the Governor, or its otherwise becoming law.



