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~~red struck-out text denotes deleted text~~

**2021 AL H 437**

**Author:** Collins  
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Act No. 2021-419

HB437

Rep(s). By Representatives Collins, Wadsworth, Simpson, Ball, Reynolds, Pettus, Ledbetter, Isbell, Faulkner, Wilcox, Brown (K), Baker, Meadows, Nordgren, Carns, Greer, Rafferty, Hollis, Coleman, Lovvorn, McMillan, Shiver, Faust, Wood (D), Robertson, Sorrells, Stringer, Ellis and Sells

ENROLLED, An Act,

Relating to wine; to amend Section 28-1-4, Code of Alabama 1975; to add Sections 28-3A-6.1 and 28-3A-6.2 and Chapter 8A of Title 28 to the Code of Alabama 1975; to allow certain wine manufacturers to obtain a direct wine shipper license from the Alcoholic Beverage Control Board to allow the licensee to ship limited quantities of wine to Alabama residents for personal use in limited circumstances; to provide for the licensing procedure for direct wine shippers and wine fulfillment centers; to authorize common or permit carriers to ship wine to residents; to provide for reporting from the carriers and wineries to the Alcoholic Beverage Control Board and other applicable agencies; to provide that the direct shipment of wine without a license constitutes a Class C misdemeanor; to authorize the Alcoholic Beverage Control Board to adopt rules; to require licensed importers and manufacturers of wine to enter into exclusive franchise agreements with wholesalers; to regulate franchise agreements between suppliers and wholesalers of wine; to provide for other business relations between suppliers and wholesalers of wine; to provide for an effective date; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

"Section 28-1-4.

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

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

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

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

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

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

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

"(2) The weight of the shipment.

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

"(4) A unique tracking number.

"(5) The date of delivery.

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

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

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

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

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

Section 28-3A-6.1. Direct shipment of wine by a manufacturer.

(a) Any person licensed ~~by the board~~ as a wine manufacturer who holds a federal basic wine manufacturing permit pursuant to the Federal Alcohol Administration Act, 27 U.S.C. Section 201 et seq., and who is in the business of manufacturing and bottling wine may obtain a direct wine shipper license from the board as provided in this section. A direct wine shipper licensee may ship annually up to 12 cases of unopened containers of wine to any one Alabama resident in a 12-month period, each case not exceeding nine liters of wine. A direct wine shipper licensee may ship only wine (i) produced by the direct wine shipper licensee; (ii) produced by or for the direct wine shipper licensee under a written contract, existing at the time of shipment, with another manufacturer of wine that holds a federal basic wine manufacturing permit pursuant to the Federal Alcohol Administration Act, 27 U.S.C. Section 201 et seq., and who is in the business of manufacturing and bottling wine; or (iii) exclusively produced and bottled for the direct wine shipper licensee by a manufacturer of wine that holds a federal basic wine manufacturing permit pursuant to the Federal Alcohol Administration Act, 27 U.S.C. Section 201 et seq., and who is in the business of manufacturing and bottling wine. The wine shall be shipped and transported by common or permit carrier directly from the direct wine shipper licensee's licensed premises, or from the direct wine shipper licensee through a wine fulfillment center as provided in Section 28-3A-6.2, to a resident of Alabama who is at least 21 years of age for the resident's personal use and not for resale.

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

(1) File an application with the board.

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

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

(c) A direct wine shipper licensee:

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

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

- a. Any premises licensed by the board.
- b. A public or private elementary, secondary, or post-secondary educational school, including any dormitory, housing, or common space located on the campus of any elementary, secondary or post-secondary educational school.
- c. A prison, reformatory, or other correctional facility.
- d. A hospital or other healthcare facility, including, but not limited to, an acute care, addiction or substance abuse, or mental or psychiatric care facility.
- e. A locker, a mailbox, a storage facility, or a package shipping or similar service business.
- f. An address that is not a permanent street address.

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

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

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

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

- a. The name and address of the Alabama resident who placed the order.
- b. For each completed shipment, evidence of signature by an individual of age 21 or older.
- c. The name and license number of the common or permit carrier engaged in the shipment.
- d. For each shipment by a wine fulfillment center licensee on behalf of the direct wine shipper, the name and license number of the wine fulfillment center licensee engaged in the shipment.
- e. The date of shipment.
- f. The carrier tracking number.
- g. The quantity of wine in the shipment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 28-3A-6.2.

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

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

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

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

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

b. A retailer licensed by the board.

c. An out-of-state retailer.

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

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

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

(2) Any other information required by the board.

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

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

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

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

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

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

(6) Report to the board on a quarterly basis in a manner prescribed by the board all of the following information for each wine shipment into the state pursuant to this section:

- a. The name, address, and license number of the direct wine shipper licensee and the point of origin of shipment from which the wine fulfillment center licensee received the wine, if different from the address of the direct wine shipper licensee.
- b. The name and address of the Alabama resident who placed the order.
- c. For each completed shipment, evidence of signature by an individual of age 21 or older.
- d. The name and license number of the common or permit carrier engaged in the shipment.
- e. The date of shipment.
- f. The carrier tracking number.
- g. The quantity of wine in the shipment.

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

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

- (1) For the first violation, a civil penalty not to exceed five hundred dollars (\$500).
- (2) For a second violation, a civil penalty not to exceed three thousand dollars (\$3,000).
- (3) For a third or any subsequent violation, a civil penalty not to exceed six thousand dollars (\$6,000).

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

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

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

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

#### Section 28-8A-1. Legislative Intent and General Provisions.

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

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

#### Section 28-8A-2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

Section 28-8A-3. Existing Franchise Laws.

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

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

Section 28-8A-4. Territorial Agreements.

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

Section 28-8A-5. Supplier Prohibitions.

A supplier shall not do any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Section 28-8A-6. Wholesaler Prohibitions.

A wholesaler shall not do any of the following:

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

(2) Sell or deliver wine to a retail licensee located outside the sales territory designated to the wholesaler by the supplier of a particular brand or brands of wine. Notwithstanding the foregoing, during periods of temporary service interruptions impacting a particular sales territory, a wholesaler who normally services the impacted sales territory shall file with the board and give to the affected supplier written notice designating the specific licensed wholesaler or wholesalers, not disapproved by the supplier, who will service the sales territory during the period of temporary service interruption and the approximate length of time for the service interruption. Each wholesaler designated to temporarily service the sales territory shall be a wholesaler who has a current written agreement with the supplier for the brand or brands affected. When the temporary service interruption is over, the wholesaler who normally services the sales territory shall notify in writing the board, the supplier, and the wholesaler, or wholesalers, servicing the sales territory on a temporary basis of this fact, and any wholesaler servicing the sales territory on a temporary basis shall cease servicing the sales territory upon receipt of notice. A wholesaler who is designated to service the impacted sales territory during the period of temporary service shall not be in violation of this chapter, and, with respect to the temporary service territory, shall not have any of the rights provided under Sections 28-8A-7 and 28-8A-9.

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

#### Section 28-8A-7. Supplier and Wholesaler Agreements.

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

- (1) Has satisfied the applicable notice requirements of subsection (c).
- (2) Has acted in good faith.
- (3) Has good cause for the amendment, modification, cancellation, termination, nonrenewal, discontinuance, or forced resignation.

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

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

- (1) A statement of intention to amend, modify, terminate, cancel, not renew, or discontinue the agreement.
- (2) A statement of the reason for the amendment, modification, termination, cancellation, nonrenewal, or discontinuance.
- (3) The date on which the amendment, modification, termination, cancellation, nonrenewal, or discontinuance takes effect.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

#### Section 28-8A-8. Transfers of Wholesaler Business.

(a) Upon written notice of intent to transfer the wholesaler's business, any individual owning or deceased individual who owned an interest in a wholesaler may transfer the wholesaler's business to a designated member, or any other person who meets the nondiscriminatory, material, and reasonable qualifications and standards required by the supplier for Alabama wholesalers. The consent or approval of the supplier shall not be required of any transfer of the wholesaler's business, including the assignment of wholesaler's rights under the agreement, to a designated member or shall not be withheld or unreasonably delayed to a proposed transferee, other than a designated member, who meets the nondiscriminatory, material, and reasonable qualifications and standards. Provided, however, the supplier shall have the burden of proving that the proposed transferee fails to meet the qualifications and standards which are nondiscriminatory, material, and reasonable and consistently applied to Alabama wholesalers by the supplier. Provided, the designated member or transferee shall in no event be qualified as a transferee without the prior written approval or consent of the supplier, where the proposed transferee shall have been involved in any of the following:

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

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

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

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

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

#### Section 28-8A-9.

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

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

(c) Not more than 10 business days after the notice to enter into arbitration has been delivered, the other party shall send written notice to the requesting party declaring its intention either to proceed or not to proceed with arbitration. Should the other party fail to

respond within the 10 business days, it shall be conclusively presumed that the party shall have agreed to arbitration.

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

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

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

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

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

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

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

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

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

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

#### Section 28-8A-11. Standards of Conduct.

(a) If a supplier engages in conduct prohibited under this chapter, a wholesaler with which the supplier has an agreement may maintain a civil action against the supplier to recover actual damages reasonably incurred as the result of the prohibited conduct. If a wholesaler engages in conduct prohibited under this chapter, a supplier with which the wholesaler has an agreement may maintain a civil action against the wholesaler to recover actual damages reasonably incurred as the result of the prohibited conduct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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