

1 HB391
2 198823-1
3 By Representatives Brown (C) and Stringer
4 RFD: Commerce and Small Business
5 First Read: 09-APR-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 directly
14 to participate in or contribute to any local or national
15 advertising fund controlled directly or indirectly by a
16 supplier.

17 "(14) Require a wholesaler to construct, expand, or
18 remodel a wholesaler's warehouse or office space.

19 ~~"(12)~~ (15) Take any retaliatory action against a
20 wholesaler that files a complaint regarding an alleged
21 violation by the supplier of federal, state or local law or an
22 administrative rule.

23 ~~"(13)~~ (16) Require or prohibit, without just and
24 reasonable cause, any change in the manager or successor
25 manager of any wholesaler who has been approved by the
26 supplier as of or subsequent to March 3, 1988. Should a
27 wholesaler change an approved manager or successor manager, a

1 supplier shall not require or prohibit the change unless the
2 person selected by the wholesaler fails to meet the
3 nondiscriminatory, material and reasonable standards and
4 qualifications for managers of Alabama wholesalers of the
5 supplier which standards and qualifications previously have
6 been consistently applied to Alabama wholesalers by the
7 supplier. Provided, however, the supplier shall have the
8 burden of proving that such person fails to meet such
9 standards and qualifications which are nondiscriminatory,
10 material and reasonable and have been consistently applied to
11 Alabama wholesalers.

12 ~~"(14)~~ (17) Upon written notice of intent to transfer
13 the wholesaler's business, interfere with, prevent, or
14 unreasonably delay (not to exceed 30 days) the transfer of the
15 wholesaler's business if the proposed transferee is a
16 designated member.

17 ~~"(15)~~ (18) Upon written notice of intent to transfer
18 the wholesaler's business other than to a designated member,
19 withhold consent to or approval of, or unreasonably delay (not
20 to exceed 30 days after receipt of all material information
21 reasonably requested) a response to a request by the
22 wholesaler for, any transfer of a wholesaler's business if the
23 proposed transferee meets the nondiscriminatory, material and
24 reasonable qualifications and standards required by the
25 supplier for Alabama wholesalers. Provided, however, the
26 supplier shall have the burden of proving that the proposed
27 transferee does not meet such standards and qualifications

1 which are nondiscriminatory, material and reasonable and have
2 been consistently applied to Alabama wholesalers.

3 "~~(16)~~(19) Restrict or inhibit, directly or
4 indirectly, the right of free association among wholesalers
5 for any lawful purpose."

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

8 §28-9-5.1.

9 For purposes of this chapter, possession of beer
10 occurs when the wholesaler receives the beer at the
11 wholesaler's place of business during the hours of operation
12 established by the wholesaler. Risk of loss from destruction
13 or casualty to the beer is shifted from the supplier to the
14 wholesaler when the wholesaler receives the beer; however, a
15 wholesaler shall be deemed to have received beer if the
16 wholesaler takes possession at the place of business of the
17 supplier.

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