

1 SB138  
2 209391-1  
3 By Senator Waggoner  
4 RFD: Tourism  
5 First Read: 02-FEB-21

8 SYNOPSIS: Under existing law, wineries are not  
9 permitted to ship or distribute wine directly to  
10 retailers or residents in the state. Wine  
11 manufacturers and importers are required to sell  
12 wine through a licensed wholesaler.

13 This bill would require each supplier of  
14 wine to designate sales territories for each of its  
15 brands and enter into an exclusive franchise  
16 agreement with a wholesaler for each sales  
17 territory.

18 This bill would set conditions and  
19 requirements for franchise agreements between  
20 suppliers and wholesale distributors of wine,  
21 including provisions for the modification,  
22 termination, cancellation, nonrenewal, or  
23 discontinuance of an agreement.

24 This bill would authorize certain wineries  
25 to directly ship wine to individuals in the state.

26 This bill would provide further duties of  
27 the Alcoholic Beverage Control Board.

1                   This bill would delete obsolete language  
2                   from the Code of Alabama 1975.

3                   Amendment 621 of the Constitution of Alabama  
4                   of 1901, now appearing as Section 111.05 of the  
5                   Official Recompilation of the Constitution of  
6                   Alabama of 1901, as amended, prohibits a general  
7                   law whose purpose or effect would be to require a  
8                   new or increased expenditure of local funds from  
9                   becoming effective with regard to a local  
10                  governmental entity without enactment by a 2/3 vote  
11                  unless: it comes within one of a number of  
12                  specified exceptions; it is approved by the  
13                  affected entity; or the Legislature appropriates  
14                  funds, or provides a local source of revenue, to  
15                  the entity for the purpose.

16                  The purpose or effect of this bill would be  
17                  to require a new or increased expenditure of local  
18                  funds within the meaning of the amendment. However,  
19                  the bill does not require approval of a local  
20                  governmental entity or enactment by a 2/3 vote to  
21                  become effective because it comes within one of the  
22                  specified exceptions contained in the amendment.

23  
24                                   A BILL  
25                                   TO BE ENTITLED  
26                                   AN ACT  
27

1                   Relating to alcoholic beverages; to amend Sections  
2                   28-1-4 and 28-3-1, Code of Alabama 1975; to add Chapter 8A to  
3                   Title 28 of the Code of Alabama 1975; to allow certain wine  
4                   manufacturers to obtain a direct wine shipper license from the  
5                   Alcoholic Beverage Control Board to allow the licensee to ship  
6                   limited quantities of wine directly to individuals in the  
7                   state for personal use in limited circumstances; to provide  
8                   for the permitting procedure; to authorize common or permit  
9                   carriers to ship wine to residents; to provide for reporting  
10                  from the carriers and wineries to the Alcoholic Beverage  
11                  Control Board and other applicable agencies; to provide that  
12                  the direct shipment of wine without a license constitutes a  
13                  Class C misdemeanor; to require licensed importers and  
14                  manufacturers of wine to enter into exclusive franchise  
15                  agreements with wholesalers; to regulate franchise agreements  
16                  between suppliers and wholesalers of wine; to provide for  
17                  other business relations between suppliers and wholesalers of  
18                  wine; to provide for an effective date; and in connection  
19                  therewith would have as its purpose or effect the requirement  
20                  of a new or increased expenditure of local funds within the  
21                  meaning of Amendment 621 of the Constitution of Alabama of  
22                  1901, now appearing as Section 111.05 of the Official  
23                  Recompilation of the Constitution of Alabama of 1901, as  
24                  amended.

25                  BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26                         Section 1. The Legislature hereby finds and declares  
27                         that this act is enacted pursuant to the authority granted to

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

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

25 "§28-1-4.

26 "(a) The words and phrases used in this section  
27 shall have the meanings ascribed to them in Section 28-3-1 and

1 any acts amendatory thereof, supplementary thereto or  
2 substituted therefor.

3 "(b) It shall be unlawful for common or permit  
4 carriers, operators of trucks, buses or other conveyances or  
5 out-of-state manufacturers or suppliers to make delivery of  
6 any alcoholic beverage from ~~without~~ outside the State of  
7 Alabama to any person, association or corporation within the  
8 state, except to the Alabama Alcoholic Beverage Control Board  
9 and to manufacturers, importers, wholesalers and warehouses  
10 licensed by the Alabama Alcoholic Beverage Control Board to  
11 receive the alcoholic beverages so delivered.

12 "(c) (1) Notwithstanding subsection (b), a common or  
13 permit carrier may transport and ship shipments of table wine  
14 to an individual in the state who is at least 21 years of age  
15 at the direction of a direct wine shipper licensee, as  
16 provided in Section 28-3A-6.1. A common or permit carrier  
17 making a shipment as provided in Section 28-3A-6.1 is not  
18 required to maintain in the vehicle or within the possession  
19 of the driver of the vehicle a bill of lading, consignment, or  
20 any other documentary evidence of the cargo being transported  
21 other than information available on the package shipping  
22 label.

23 "(2) A common or permit carrier who transports and  
24 ships shipments of wine under this subsection shall file  
25 quarterly reports with the Tax and Trade Practices Division of  
26 the board and the Sales and Use Tax Division of the Department  
27 of Revenue on all wine shipments during the reporting period.

1 The quarterly report shall contain all of the following with  
2 regard to each shipment:

3 "a. The name and business address of the carrier  
4 making the report.

5 "b. The period of time covered by the report.

6 "c. The name and business address of the direct wine  
7 shipper licensee.

8 "d. The weight of the shipment.

9 "e. The name and address of the individual person to  
10 whom the wine was shipped.

11 "f. A unique tracking number.

12 "g. The date of receipt of the shipment by the  
13 individual.

14 "(3) Any failure by a common or permit carrier to  
15 comply with the reporting requirements in this subsection that  
16 continues for more than 30 days after receiving notice by the  
17 board or Department of Revenue of the failure, may result in  
18 the suspension of the carrier's license to operate in the  
19 state or the imposition of any other penalty the relevant  
20 licensing authority in the state is authorized to impose.

21 ~~"(c) (d) Any violation of subsection (a) of this~~  
22 ~~section (b) shall be a misdemeanor, punishable as provided in~~  
23 ~~paragraph subdivision (1) of subsection (b) of Section~~  
24 ~~28-3A-25.~~

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

1           Section 3. Section 28-3-1, Code of Alabama 1975, is  
2 amended to read as follows:

3           "§28-3-1.

4           "As used in this title, the following words shall  
5 have the following meanings unless the context clearly  
6 indicates otherwise:

7           "(1) ALCOHOLIC BEVERAGES. Any alcoholic, spirituous,  
8 vinous, fermented, or other alcoholic beverage, or combination  
9 of liquors and mixed liquor, a part of which is spirituous,  
10 vinous, fermented, or otherwise alcoholic, and all drinks or  
11 drinkable liquids, preparations or mixtures intended for  
12 beverage purposes, which contain one-half of one percent or  
13 more of alcohol by volume, and shall include liquor, beer, and  
14 wine.

15           "(2) ASSOCIATION. A partnership, limited  
16 partnership, or any form of unincorporated enterprise owned by  
17 two or more persons.

18           "(3) BEER, or MALT OR BREWED BEVERAGES. ~~Except as~~  
19 ~~otherwise provided in this subdivision, any~~ Any beer, lager  
20 beer, ale, porter, malt or brewed beverage, or similar  
21 fermented ~~malt liquor~~ beverage containing one-half of one  
22 percent or more of alcohol by volume and not in excess of  
23 thirteen and nine-tenths percent alcohol by volume, ~~by~~  
24 ~~whatever name the same may be called~~ brewed or produced from  
25 malt, wholly or in part, or from rice, grain of any kind,  
26 bran, glucose, sugar, or molasses. A beer or malt or brewed  
27 beverage may incorporate honey, fruit, fruit juice, fruit



1 concentrate, herbs, spices, or other flavorings during the  
2 fermentation process. The term does not include any product  
3 defined as liquor, table wine, or wine.

4 "(4) BOARD. The Alcoholic Beverage Control Board.

5 "(5) BRANDY. All beverages which are an alcoholic  
6 distillate from the fermented juice, mash, or wine of fruit,  
7 or from the residue thereof, produced in such manner that the  
8 distillate possesses the taste, aroma, and characteristics  
9 generally attributed to the beverage, as bottled at not less  
10 than 80 degree proof.

11 "(6) CARTON. The package or container or containers  
12 in which alcoholic beverages are originally packaged for  
13 shipment to market by the manufacturer or its designated  
14 representatives or the importer.

15 "(7) CIDER. A fermented alcoholic beverage made from  
16 apple juice and containing not more than 8.5 percent alcohol  
17 by volume.

18 "(8) CLUB.

19 "a. Class I. A corporation or association organized  
20 or formed in good faith by authority of law and which must  
21 have at least 150 paid-up members. It must be the owner,  
22 lessee, or occupant of an establishment operated solely for  
23 the objects of a national, social, patriotic, political, or  
24 athletic nature or the like, but not for pecuniary gain, and  
25 the property as well as the advantages of which, belong to all  
26 the members and which maintains an establishment provided with  
27 special space and accommodations where, in consideration of

1 payment, food with or without lodging is habitually served.  
2 The club shall hold regular meetings, continue its business  
3 through officers regularly elected, admit members by written  
4 application, investigation, and ballot and charge and collect  
5 dues from elected members.

6 "b. Class II. A corporation or association organized  
7 or formed in good faith by authority of law and which must  
8 have at least 100 paid-up members. It must be the owner,  
9 lessee, or occupant of an establishment operated solely for  
10 the objects of a national, social, patriotic, political, or  
11 athletic nature or the like. The club shall hold regular  
12 meetings, continue its business through officers regularly  
13 elected, admit members by written application, investigation  
14 and ballot and charge and collect dues from elected members.

15 "(9) CONTAINER. The single bottle, can, keg, bag, or  
16 other receptacle, not a carton, in which alcoholic beverages  
17 are originally packaged for the market by the manufacturer or  
18 importer and from which the alcoholic beverage is consumed by  
19 or dispensed to the public.

20 "(10) CORPORATION. A corporation or joint stock  
21 association organized under the laws of this state, the United  
22 States, or any other state, territory or foreign country, or  
23 dependency.

24 "(11) DIRECT WINE SHIPPER LICENSE. A license that  
25 authorizes the licensee to ship wine or contract for the  
26 shipment of wine directly from a manufacturer to an individual  
27 pursuant to Section 28-3A-6.1.

1           "~~(11)~~(12) DRY COUNTY. Any county which by a majority  
2 of those voting voted in the negative in an election  
3 heretofore held under the applicable statutes at the time of  
4 the election or may hereafter vote in the negative in an  
5 election or special method referendum hereafter held in  
6 accordance with the provisions of Chapter 2 of this title, or  
7 held in accordance with the provisions of any act hereafter  
8 enacted permitting such election.

9           "~~(12)~~(13) DRY MUNICIPALITY. Any municipality within  
10 a wet county which has, by its governing body or by a majority  
11 of those voting in a municipal election heretofore held in  
12 accordance with the provisions of Section 28-2-22, or in a  
13 municipal option election heretofore or hereafter held in  
14 accordance with the provisions of Act 84-408, Acts of Alabama  
15 1984, appearing as Chapter 2A of this title, or any act  
16 hereafter enacted permitting municipal option election, voted  
17 to exclude the sale of alcoholic beverages within the  
18 corporate limits of the municipality.

19           "~~(13)~~(14) GENERAL WELFARE PURPOSES.

20           "a. The administration of public assistance as set  
21 out in Sections 38-2-5 and 38-4-1;

22           "b. Services, including supplementation and  
23 supplementary services under the federal Social Security Act,  
24 to or on behalf of persons to whom such public assistance may  
25 be given under Sections 38-2-5 and 38-4-1;

26           "c. Service to and on behalf of dependent, neglected  
27 or delinquent children; and

1 "d. Investigative and referral services to and on  
2 behalf of needy persons.

3 "~~(14)~~ (15) HEARING COMMISSION. A body appointed by  
4 the board to hear and decide all contested license  
5 applications and all disciplinary charges against any licensee  
6 for violation of this title or the regulations of the board.

7 "~~(15)~~ (16) HOTEL. A building or buildings held out to  
8 the public for housing accommodations of travelers or  
9 transients, and shall include motel, but shall not include a  
10 rooming house or boarding house.

11 "~~(16)~~ (17) IMPORTER. Any person, association, or  
12 corporation engaged in importing alcoholic beverages, liquor,  
13 wine, or beer, manufactured outside of the United States of  
14 America into this state or for sale or distribution in this  
15 state, or to the board or to a licensee of the board.

16 "~~(17)~~ (18) KEG. A pressurized factory sealed  
17 container with a capacity equal to or greater than five US  
18 gallons, from which beer is withdrawn by means of an external  
19 tap.

20 "~~(18)~~ (19) LIQUOR. Any alcoholic, spirituous, vinous,  
21 fermented, or other alcoholic beverage, or combination of  
22 liquors and mixed liquor, a part of which is spirituous,  
23 fermented, vinous or otherwise alcoholic, and all drinks or  
24 drinkable liquids, preparations or mixtures intended for  
25 beverage purposes, which contain one-half of one percent or  
26 more of alcohol by volume, except beer and table wine.

1           "~~(19)~~ (20) LIQUOR STORE. A liquor store operated by  
2 the board, where alcoholic beverages other than beer are  
3 authorized to be sold in unopened containers.

4           "~~(20)~~ (21) MANUFACTURER. Any person, association, or  
5 corporation engaged in the producing, bottling, manufacturing,  
6 distilling, rectifying, or compounding of alcoholic beverages,  
7 liquor, beer, or wine in this state or for sale or  
8 distribution in this state or to the board or to a licensee of  
9 the board.

10           "~~(21)~~ (22) MEAD. An alcoholic beverage produced by  
11 fermenting a solution of honey and water with grain mash and  
12 containing not more than 18 percent alcohol by volume.

13           "~~(22)~~ (23) MEAL. A diversified selection of food  
14 some of which is not susceptible of being consumed in the  
15 absence of at least some articles of tableware and which  
16 cannot be conveniently consumed while one is standing or  
17 walking about.

18           "~~(23)~~ (24) MINOR. Any person under 21 years of age;  
19 provided, however, in the event Section 28-1-5, shall be  
20 repealed or otherwise shall be no longer in effect, thereafter  
21 the provisions of Section 26-1-1, shall govern.

22           "~~(24)~~ (25) MUNICIPALITY. Any incorporated city or  
23 town of this state to include its police jurisdiction.

24           "~~(25)~~ (26) PERSON. Every natural person, association,  
25 or corporation. Whenever used in a clause prescribing or  
26 imposing a fine or imprisonment, or both, such term as applied  
27 to association shall mean the partners or members thereof and

1 as applied to corporation shall mean the officers thereof,  
2 except as to incorporated clubs the term person shall mean  
3 such individual or individuals who, under the bylaws of such  
4 clubs, shall have jurisdiction over the possession and sale of  
5 liquor therein.

6 "~~(26)~~ (27) POPULATION. The population according to  
7 the last preceding or any subsequent decennial census of the  
8 United States, except where a municipality is incorporated  
9 subsequent to the last census, in which event, its population  
10 until the next decennial census shall be the population of the  
11 municipality as determined by the judge of probate of the  
12 county as the official population on the date of its  
13 incorporation.

14 "~~(27)~~ (28) RESTAURANT. A reputable place licensed as  
15 a restaurant, operated by a responsible person of good  
16 reputation and habitually and principally used for the purpose  
17 of preparing and serving meals for the public to consume on  
18 the premises.

19 "~~(28)~~ (29) RETAILER. Any person licensed by the board  
20 to engage in the retail sale of any alcoholic beverages to the  
21 consumer.

22 "~~(29)~~ (30) SALE or SELL. Any transfer of liquor, wine  
23 or beer for a consideration, and any gift in connection with,  
24 or as a part of, a transfer of property other than liquor,  
25 wine or beer for a consideration.

1           "~~(30)~~(31) SELLING PRICE. The total marked-up price  
2 of spirituous or vinous liquors sold by the board, exclusive  
3 of taxes levied thereon.

4           "(32) SHIPMENT. The transportation of alcoholic  
5 beverages directly from a manufacturer to an individual,  
6 pursuant to Section 28-3A-6.1.

7           "~~(31)~~(33) TABLE WINE. Except as otherwise provided  
8 in this subdivision, any wine containing not more than 24  
9 percent alcohol by volume. Table wine does not include any  
10 wine containing more than sixteen and one-half percent alcohol  
11 by volume that is made with herbs or flavors, except vermouth,  
12 or is an imitation or other than standard wine. Table wine is  
13 not liquor, spirituous, or vinous.

14           "~~(32)~~(34) UNOPENED CONTAINER. A container containing  
15 alcoholic beverages, which has not been opened or unsealed  
16 subsequent to filling and sealing by the manufacturer or  
17 importer.

18           "~~(33)~~(35) WET COUNTY. Any county which by a majority  
19 of those voting voted in the affirmative in an election  
20 heretofore held in accordance with the statutes applicable at  
21 the time of the election or may hereafter vote in the  
22 affirmative in an election or special method referendum held  
23 in accordance with the provisions of Chapter 2 of this title,  
24 or other statutes applicable at the time of the election.

25           "~~(34)~~(36) WET MUNICIPALITY. Any municipality in a  
26 dry county which by a majority of those voting voted in the  
27 affirmative in a municipal option election heretofore or

1 hereafter held in accordance with the provisions of Act  
2 84-408, Acts of Alabama 1984, appearing as Chapter 2A of this  
3 title, as amended, or any act hereafter enacted permitting  
4 municipal option election, or any municipality which became  
5 wet by vote of the governing body or by the voters of the  
6 municipality heretofore or hereafter held under the special  
7 method referendum provisions of Section 28-2-22, or as  
8 hereafter provided, where the county has become dry subsequent  
9 to the elected wet status of the municipality.

10 "~~(35)~~ (37) WHOLESALER. Any person licensed by the  
11 board to engage in the sale and distribution of table wine and  
12 beer, or either of them, within this state, at wholesale only,  
13 to be sold by export or to retail licensees or other wholesale  
14 licensees or others within this state lawfully authorized to  
15 sell table wine and beer, or either of them, for the purpose  
16 of resale only.

17 "~~(36)~~ (38) WINE. All beverages made from the  
18 fermentation of fruits, berries, or grapes, with or without  
19 added spirits, and produced in accordance with the laws and  
20 regulations of the United States, containing not more than 24  
21 percent alcohol by volume, and shall include all sparkling  
22 wines, carbonated wines, special natural wines, rectified  
23 wines, vermouths, vinous beverages, vinous liquors, and like  
24 products, including restored or unrestored pure condensed  
25 juice."

26 Section 4. Section 28-3A-6.1 is added to the Code of  
27 Alabama 1975, to read as follows:



1 §28-3A-6.1.

2 (a) A manufacturer of wine that holds a federal  
3 basic permit as a winery, produces or bottles wine under  
4 brands and related labels of wine owned by, or directly  
5 licensed to, the manufacturer and produces and bottles,  
6 directly and indirectly in the aggregate through affiliates,  
7 subsidiaries, or otherwise, less than 50,000 gallons of wine  
8 each calendar year, may obtain a direct wine shipper license,  
9 as provided in this section. A direct wine shipper licensee,  
10 subject to compliance with all terms and provisions of this  
11 section, may ship up to 12 nine-liter cases of wine produced  
12 or bottled by the licensee to any one household within a  
13 12-month period, for personal use and not for resale. The wine  
14 shall be shipped by common or permit carrier directly from the  
15 licensee's primary place of manufacturing or bottling to an  
16 individual in the State of Alabama. A licensee may not ship  
17 wine to any individual who is not at least 21 years of age.

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

21 (1) File an application with the board.

22 (2) Be licensed as an in-state or out-of-state  
23 manufacturer of wine with the board, and pay a direct wine  
24 shipper license fee of two hundred fifty dollars (\$250) to the  
25 board.

26 (3) Provide to the board a true copy of its federal  
27 basic permit as a winery and evidence that it produces and

1 bottles, directly and indirectly in the aggregate through  
2 affiliates, subsidiaries or otherwise, less than 50,000  
3 gallons of wine each calendar year.

4 (c) A direct wine shipper licensee:

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

7 (2) May not ship any wine to any premises licensed  
8 by the board.

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

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

15 b. A prison, reformatory, or other correctional  
16 facility.

17 c. A hospital or other healthcare facility,  
18 including, but not limited to, an acute care, addiction or  
19 substance abuse, or mental or psychiatric care facility.

20 d. A locker, a mailbox, a storage facility, or a  
21 package shipping or similar service business.

22 e. An address that is not a permanent street  
23 address.

24 (4) May not ship any wine as a direct wine shipper  
25 licensee unless that wine has been approved for sale and  
26 shipment into the state by the board.

1           (5) May not ship any wine as a direct wine shipper  
2 licensee unless the direct wine shipper licensee is the owner  
3 of the Certificate of Label Approval issued by the Alcohol and  
4 Tobacco Tax and Trade Bureau for that wine.

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

9           (7) Shall collect and properly remit all state and  
10 local sales or use taxes and excise taxes due on sales into  
11 the State of Alabama.

12           (8) Shall permit the board, the Department of  
13 Revenue, and the local taxing authority to perform an audit of  
14 the direct wine shipper licensee's records upon request.

15           (9) Shall surrender its direct wine shipper license  
16 if it produces and bottles, directly and indirectly in the  
17 aggregate through affiliates, subsidiaries, or otherwise, more  
18 than 50,000 gallons of wine in a calendar year.

19           (d) A direct wine shipper licensee may renew its  
20 license with the board by doing all of the following:

21           (1) Paying annually a renewal fee equal to the  
22 initial filing fee provided in subdivision (b) (2).

23           (2) Renewing its manufacturer license in conjunction  
24 with its direct wine shipper license.

25           (3) Providing to the board a true copy of its  
26 federal basic permit as a winery.

1           (4) Providing to the board evidence that it produces  
2 and bottles, directly and indirectly in the aggregate through  
3 affiliates, subsidiaries or otherwise, less than 50,000  
4 gallons of wine each calendar year.

5           (e) Any person that violates this section,  
6 including, but not limited to, any person that ships wine  
7 directly to any resident in Alabama without possessing a  
8 current direct wine shipper license, any person that receives,  
9 makes, participates in, or transports any improper shipment,  
10 and any person that properly receives a shipment of wine from  
11 a direct wine shipper licensee and then resells such wine, is  
12 guilty of a Class C misdemeanor and is subject to a penalty  
13 imposed by the board by administrative proceedings that apply  
14 to alcoholic beverages licenses, as follows:

15           (1) For the first violation, a fine not to exceed  
16 five hundred dollars (\$500).

17           (2) For a second violation, a fine not to exceed  
18 three thousand dollars (\$3,000).

19           (3) For a third violation, a fine not to exceed six  
20 thousand dollars (\$6,000).

21           (4) For a subsequent violation, suspension of the  
22 direct wine shipper license for a period of not more than two  
23 years.

24           (f) The board may enforce the requirements of this  
25 section to suspend or revoke a direct wine shipper license by  
26 the same administrative proceedings that apply to alcoholic  
27 beverage licenses, and the board may accept payment of a fine

1 in lieu of suspension or revocation, such payments to be  
2 determined by rule adopted by the board.

3 (g) Any fines or fees received by the board under  
4 this section, including the direct wine shipper license fee,  
5 shall be deposited into the state General Fund for use by the  
6 board for the purchase of evidence in order to perform its  
7 regulatory duties under Title 28.

8 (h) The board may adopt rules to implement this  
9 section.

10 Section 5. Chapter 8A, commencing with Section  
11 28-8A-1, is added to Title 28 of the Code of Alabama 1975, to  
12 read as follows:

13 §28-8A-1. Legislative Intent and General Provisions.

14 (a) The Legislature hereby finds and declares that  
15 this chapter is enacted pursuant to the authority granted to  
16 the state under the Twenty-First Amendment to the United  
17 States Constitution, the powers reserved to the state under  
18 the Tenth Amendment to the United States Constitution, and the  
19 inherent powers of the state under the Constitution of Alabama  
20 of 1901, in order to regulate the traffic of alcoholic  
21 beverages and to substitute the regulations and oversight  
22 established in this act for the application of federal and  
23 state antitrust laws that otherwise would apply to any  
24 potential anti-competitive effects of this title. For the  
25 avoidance of doubt, the intent of the Legislature is to  
26 maintain the uniform three-tier system of control over the  
27 sale, purchase, taxation, transportation, manufacture,

1 consumption, and possession of alcoholic beverages in the  
2 state to promote the health, safety, and welfare of residents  
3 of this state by, among other purposes, ensuring the state  
4 shall be able to register, audit, inspect, seize, recall and  
5 test alcoholic beverages shipped into, distributed, and sold  
6 throughout this state; and this expression of the policy and  
7 intent of the Legislature is intended to satisfy the clear  
8 articulation test for state action immunity as has been  
9 established by the United States Supreme Court in California  
10 Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., et al.

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

22 §28-8A-2. Definitions.

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

25 (1) AGREEMENT. Any agreement between a wholesaler  
26 and a supplier, whether oral or written, whereby a wholesaler

1 is granted the right to purchase and sell a brand or brands of  
2 wine sold by a supplier.

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

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

1 conservator of the property of an incapacitated individual  
2 owning an ownership interest in a wholesaler.

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

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

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

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

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



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

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

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

15                   §28-8A-3. Existing Franchise Laws.

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

18                   (b) Nothing in this chapter shall be deemed to  
19 repeal or amend wine franchise laws existing on August 1,  
20 2021. This article is intended to provide wine franchise  
21 regulation for counties in which regulation does not exist by  
22 local law, and to leave in effect and unchanged existing local  
23 wine franchise laws in Baldwin, Jefferson, Mobile, Montgomery,  
24 and Shelby Counties.

25                   §28-8A-4. Territorial Agreements.

26                   Each supplier of wine licensed by the board to sell  
27 its wine within the State of Alabama shall sell its wine

1 through wholesaler licensees of the board and shall grant in  
2 writing to each of its wholesalers an exclusive sales  
3 territory in accordance with Chapter 8.

4 §28-8A-5. Supplier Prohibitions.

5 A supplier shall not do any of the following:

6 (1) Fail to provide each wholesaler of the  
7 supplier's brand or brands with a written agreement which  
8 contains in total the supplier's agreement with each  
9 wholesaler, and designates a specific exclusive sales  
10 territory. Any agreement that is in existence on August 1,  
11 2021, shall be renewed consistent with this chapter, and this  
12 chapter may be incorporated by reference in the agreement. No  
13 part of this chapter shall prevent a supplier from appointing,  
14 one time for a period not to exceed 90 days, a wholesaler to  
15 temporarily service a sales territory not designated to  
16 another wholesaler, until such time as a wholesaler is  
17 appointed by the supplier; and the wholesaler who is  
18 designated to service the sales territory during this period  
19 of temporary service shall not be in violation of this  
20 chapter, and, with respect to the temporary service territory,  
21 shall not have any of the rights provided under Sections  
22 28-8A-7 and 28-8A-9.

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

25 (3) Enter into an additional agreement with any  
26 other wholesaler for, or to sell to any other wholesaler, the  
27 same brand or brands of wine in the same territory or any

1 portion thereof, or to sell directly to any retailer in this  
2 state.

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

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

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

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

1 acquisition of such other brand or brands or products would  
2 have such effect.

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

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

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

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

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

24 (13) Require or prohibit, without just and  
25 reasonable cause, any change in the manager or successor  
26 manager of any wholesaler who has been approved by the  
27 supplier as of or subsequent to August 1, 2021. Should a

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

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

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

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

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

6 §28-8A-6. Wholesaler Prohibitions.

7 A wholesaler shall not do any of the following:

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

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

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

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

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

23 (a) Notwithstanding any agreement and except as  
24 otherwise provided for in this chapter, a supplier shall not  
25 amend or modify an agreement; cause a wholesaler to resign  
26 from an agreement; or cancel, terminate, fail to renew, or  
27 refuse to continue under an agreement, unless, in any of the

1       foregoing cases, the supplier has complied with all of the  
2       following:

3               (1) Has satisfied the applicable notice requirements  
4       of subsection (c).

5               (2) Has acted in good faith.

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

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

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

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



1           (2) A statement of the reason for the amendment,  
2           modification, termination, cancellation, nonrenewal, or  
3           discontinuance.

4           (3) The date on which the amendment, modification,  
5           termination, cancellation, nonrenewal, or discontinuance takes  
6           effect.

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

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

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

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

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

25          (5) The wholesaler has been afforded 30 days in  
26          which to submit a plan of corrective action to comply with the

1 agreement and an additional 120 days to cure such  
2 noncompliance in accordance with the plan.

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

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

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

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

1 stockholder and if the sale is completed prior to conviction  
2 this subdivision shall not apply.

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

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

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

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

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

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

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

23           (g) Notwithstanding subsections (a), (c), (e), and  
24 (f), a supplier may terminate, cancel, not renew, or  
25 discontinue an agreement upon not less than 30 days' prior  
26 written notice if the supplier discontinues production or  
27 discontinues distribution in this state of all brands sold by

1 the supplier to the wholesaler. Provided, however, nothing in  
2 this section shall prohibit a supplier from doing either of  
3 the following:

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

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

16 §28-8A-8. Transfers of Wholesaler Business.

17 (a) Upon written notice of intent to transfer the  
18 wholesaler's business, any individual owning or deceased  
19 individual who owned an interest in a wholesaler may transfer  
20 the wholesaler's business to a designated member, or any other  
21 person who meets the nondiscriminatory, material, and  
22 reasonable qualifications and standards required by the  
23 supplier for Alabama wholesalers. The consent or approval of  
24 the supplier shall not be required of any transfer of the  
25 wholesaler's business, including the assignment of  
26 wholesaler's rights under the agreement, to a designated  
27 member or shall not be withheld or unreasonably delayed to a

1 proposed transferee, other than a designated member, who meets  
2 the nondiscriminatory, material, and reasonable qualifications  
3 and standards. Provided, however, the supplier shall have the  
4 burden of proving that the proposed transferee fails to meet  
5 the qualifications and standards which are nondiscriminatory,  
6 material, and reasonable and consistently applied to Alabama  
7 wholesalers by the supplier. Provided, the designated member  
8 or transferee shall in no event be qualified as a transferee  
9 without the prior written approval or consent of the supplier,  
10 where the proposed transferee shall have been involved in any  
11 of the following:

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

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

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

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

26 (b) The supplier shall not interfere with, prevent,  
27 or unreasonably delay the transfer of the wholesaler's

1 business, including an assignment of wholesaler's rights under  
2 the agreement, if the proposed transferee is a designated  
3 member, or if the transferee other than a designated member  
4 meets such nondiscriminatory, material, and reasonable  
5 qualifications required by the supplier for Alabama  
6 wholesalers. Where the transferee is other than a designated  
7 member, the supplier, in good faith and for good cause related  
8 to the reasonable qualifications, may refuse to accept the  
9 transfer of the wholesaler's business or the assignment of  
10 wholesaler's rights under the agreement. The supplier shall  
11 have the burden of proving that it has acted in good faith and  
12 that there was good cause for failure to accept or consent to  
13 the transfer of the wholesaler's business or the assignment of  
14 the wholesaler's rights under the agreement.

15 §28-8A-9.

16 (a) Except as provided for in this chapter, a  
17 supplier that has amended, modified, cancelled, terminated, or  
18 refused to renew any agreement; or has caused a wholesaler to  
19 resign from any agreement; or has interfered with, prevented,  
20 or unreasonably delayed, or where required by this chapter,  
21 has withheld or unreasonably delayed consent to or approval  
22 of, any assignment or transfer of a wholesaler's business,  
23 shall pay the wholesaler reasonable compensation for the  
24 diminished value of the wholesaler's business, including any  
25 ancillary business which has been negatively affected by the  
26 act of the supplier. The value of the wholesaler's business or  
27 ancillary business shall include, but not be limited to, any

1 good will. Provided, however, nothing contained in this  
2 chapter shall give rise to a claim against the supplier or  
3 wholesaler by any proposed purchaser of wholesaler's business.

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

11 (c) Not more than 10 business days after the notice  
12 to enter into arbitration has been delivered, the other party  
13 shall send written notice to the requesting party declaring  
14 its intention either to proceed or not to proceed with  
15 arbitration. Should the other party fail to respond within the  
16 10 business days, it shall be conclusively presumed that the  
17 party shall have agreed to arbitration.

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

25 (e) Not more than 10 business days after mutual  
26 agreement of both parties has been reached to arbitrate, each  
27 party shall designate, in writing, its one arbitrator



1 representative and the party initiating arbitration shall  
2 request, in writing, a list of five arbitrators from the  
3 American Arbitration Association or its successor and request  
4 that the list shall be mailed to each party by certified mail,  
5 return receipt requested. Not more than 10 business days after  
6 the receipt of the list of five choices, the wholesaler  
7 arbitrator and the supplier arbitrator shall strike and  
8 disqualify up to two names each from the list. Should either  
9 party fail to respond within 10 business days or should more  
10 than one name remain after the strikes, the American  
11 Arbitration Association shall make the selection of the  
12 impartial arbitrator from the names not stricken from the  
13 list.

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

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

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

14           §28-8A-10. No Waiver; Successors and Transferees.

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

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

23          (c) A transferee of a wholesaler that continues in  
24          business as a wholesaler shall have the benefit of and be  
25          bound by all terms and conditions of the agreement with the  
26          supplier in effect on the date of the transfer; provided,  
27          however, a transfer of a wholesaler's business which requires

1 supplier's consent or approval but is disapproved by the  
2 supplier shall be void.

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

7 §28-8A-11. Standards of Conduct.

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

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

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

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

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

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

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

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

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

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

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

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

18 Section 6. If any provision of this act, or its  
19 application to any person or circumstance, is determined by a  
20 court to be invalid or unconstitutional, that provision shall  
21 be stricken and the remaining provisions shall be construed in  
22 accordance with the intent of the Legislature to further limit  
23 rather than expand commerce in alcoholic beverages, including  
24 by prohibiting any commerce in alcoholic beverages not  
25 expressly authorized, and to enhance strict regulatory control  
26 over taxation, distribution, and sale of alcoholic beverages

1 through the existing uniform system of regulation of alcoholic  
2 beverages.

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

11 Section 8. This act shall become effective on August  
12 1, 2021, following its passage and approval by the Governor,  
13 or its otherwise becoming law.