

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

A BILL

TO BE ENTITLED

## AN ACT

Relating to Jefferson County, relating to alcoholic beverages and the sale of wine in Jefferson County, to create the Jefferson County Wine Franchise Jobs Protection Act to provide for business relations between suppliers and wholesalers of wine; to require written agreements setting forth in full the supplier's agreement with the wholesaler, and designating a specific exclusive sales territory; to provide for prohibited acts by the supplier and by the wholesaler; to provide for conditions of amendment, modification, resignation, cancellation, termination, failure to renew, or refusal to continue the agreement; to provide for the transfer of wholesaler's business, for the establishment of nondiscriminatory, material, and reasonable qualifications and standards by suppliers, and prohibit interference with the transfer upon compliance with those standards; to provide for

1 reasonable compensation upon supplier's violation of the act,  
2 including a method of voluntary arbitration; to provide for  
3 civil actions for violations, damages, and venue; to provide  
4 for the burden; to provide that the wholesaler may not waive  
5 rights set forth in this act; to provide that the act relates  
6 to existing and future agreements, transferee of wholesaler  
7 under written agreement, and supplier's successor; to provide  
8 that this act is cumulative; and to provide that this act  
9 shall be effective on January 1, 2013.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

13                   Section 2. This act shall be operative only in  
14 Jefferson County.

15                   Section 3. The legislative intent and purpose of  
16 this act is to provide a structure for the business relations  
17 between a wholesaler and a supplier of wine in Jefferson  
18 County. Regulation in this area within the county is  
19 considered necessary for the following reasons:

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

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

25                   (c) To promote the public health, safety, and  
26 welfare.

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

(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 which 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

1 a written contract or instrument; and also includes the  
2 appointed and qualified personal representative and the  
3 testamentary trustee of a deceased individual owning an  
4 ownership interest in a wholesaler. Designated member also  
5 includes a person appointed by the court as the guardian or  
6 conservator of the property of an incapacitated individual  
7 owning an ownership interest in a wholesaler.

8 (4) GOOD FAITH. Honesty in fact and the observance  
9 of reasonable commercial standards of fair dealing in the  
10 trade, as defined in and interpreted under the Uniform  
11 Commercial Code, Section 7-2-103 of the Code of Alabama 1975.

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

21 (6) RETALIATORY ACTION. Includes, but is not limited  
22 to, the refusal to continue an agreement, or a material  
23 reduction in the quality of service or in the quantity of  
24 products available to a wholesaler under an agreement, which  
25 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.

(b) Other words or phrases used in this act shall have the meanings ascribed to them in Section 28-3-1 of the Code of Alabama 1975, as amended, and any acts amendatory thereof, supplementary thereto, or substituted therefor, unless the context clearly requires otherwise.

Section 5. Each supplier of wine licensed by the board authorizing such licensee 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, Title 28 of the Code of Alabama 1975, as amended.

## Section 6. A supplier shall not:

(a) 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 which is in existence on the effective date of this act shall be renewed consistent with this act; provided, that this act may be incorporated by reference in the agreement. Provided, however, nothing contained herein 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 such wholesaler who is designated to service the sales territory during this period of temporary service shall not be in violation of the act, and, with respect to the temporary service territory, shall not have any of the rights provided under Sections 8 and 10 of this act.

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

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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

1 adversely affect the wholesaler's quality of service, sales,  
2 or ability to compete effectively in representing the brand or  
3 brands of the supplier presently being sold by the wholesaler.  
4 The supplier shall have the burden of proving that such  
5 acquisition of such other brand or brands or products would  
6 have such effect.

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

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

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

20 (k) Require a wholesaler by any means directly to  
21 participate in or contribute to any local or national  
22 advertising fund controlled directly or indirectly by a  
23 supplier.

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

(m) 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 the effective date of this act. 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 standards and qualifications previously have been consistently applied to Alabama wholesalers by the supplier. Provided, however, the supplier shall have the burden of proving that such person fails to meet such standards and qualifications which are nondiscriminatory, material, and reasonable and have been consistently applied to Alabama wholesalers.

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

(o) Upon written notice of intent to transfer the wholesaler's business other than to a designated member, withhold consent to or approval of, or unreasonably delay (not to exceed 30 days after receipt of all material information reasonably requested) a response to a request by the wholesaler for, any transfer of a wholesaler's business if the

1 proposed transferee meets the nondiscriminatory, material, and  
2 reasonable qualifications and standards required by the  
3 supplier for Alabama wholesalers. Provided, however, the  
4 supplier shall meet the burden of proving that the proposed  
5 transferee does not meet such standards and qualifications  
6 which are nondiscriminatory, material, and reasonable and have  
7 been consistently applied to Alabama wholesalers.

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

11 Section 7. A wholesaler shall not:

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

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

1 temporarily service the sales territory shall be a wholesaler  
2 who has a current written agreement with the supplier for the  
3 brand or brands affected. When the temporary service  
4 interruption is over, the wholesaler who normally services the  
5 sales territory shall notify in writing the board, the  
6 supplier, and the wholesaler, or wholesalers, servicing the  
7 sales territory on a temporary basis of this fact, and any  
8 wholesaler servicing the sales territory on a temporary basis  
9 shall cease servicing the sales territory upon receipt of  
10 notice. A wholesaler who is designated to service the impacted  
11 sales territory during the period of temporary service shall  
12 not be in violation of this act, and, with respect to the  
13 temporary service territory, shall not have any of the rights  
14 provided under Sections 8 and 10 of this act.

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

25 Section 8. (a) Notwithstanding any agreement and  
26 except as otherwise provided for in this act, a supplier shall  
27 not amend or modify an agreement; cause a wholesaler to resign

1 from an agreement; or cancel, terminate, fail to renew, or  
2 refuse to continue under an agreement, unless, in any of the  
3 foregoing cases, the supplier has complied with all of the  
4 following:

5 (1) Has satisfied the applicable notice requirements  
6 of subsection (c) of this section.

7 (2) Has acted in good faith.

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

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

18 (c) Notwithstanding any agreement and except as  
19 otherwise provided in this section, and in addition to the  
20 time limits set forth in subsection (d) (5) of this section,  
21 the supplier shall furnish written notice of the amendment,  
22 modification, termination, cancellation, nonrenewal, or  
23 discontinuance of an agreement to the wholesaler not less than  
24 60 days before the effective date of the amendment,  
25 modification, termination, cancellation, nonrenewal, or  
26 discontinuance. The notice shall be by certified mail and  
27 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 subsection (a) (3) of this section 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) not more than 18 months before the date notification was given pursuant to subsection (a) (1) of this section.

(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 subsection (d) (5) of this section.

(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) of this section, 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) of this section 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 the United States Code or the laws of any state 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, shall have, subject to the provisions of this act,

1 the right to purchase the partnership interest or the stock of  
2 the offending partner or stockholder prior to the conviction  
3 of the offending partner or stockholder and if the sale is  
4 completed prior to conviction the provisions of this  
5 subdivision (3) shall not apply.

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

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

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

25 (3) A wholesaler who has failed to pay for wine  
26 ordered and delivered in accordance with established terms  
27 with the supplier fails to make full payment within two

1 business days after receipt of written notice of the  
2 delinquency and demand for immediate payment from the  
3 supplier.

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

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

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

26 (g) Notwithstanding subsections (a), (c), (e), and  
27 (f) of this section, 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: (1) upon not less than 30 days' notice, discontinuing the distribution of any particular brand of wine; or (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, provided that the supplier has notified the board in writing of its plan to test market, which 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 9. (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

such nondiscriminatory, material, and reasonable qualifications and standards. Provided, however, the supplier shall have the burden of proving that the proposed transferee fails to meet such qualifications and standards which are nondiscriminatory, material, and reasonable and consistently applied to Alabama wholesalers by the supplier. Provided, such designated member or transferee shall in no event be qualified as a transferee without the prior written approval or consent of the supplier, where such 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; or

(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

more than 61 days; or

(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; or

(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 may in good faith and for good cause related to the reasonable qualifications 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 10. (a) Except as provided for in this act, 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 act, 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 act 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 said party shall have agreed to arbitration.

(d) The matter of determining the amount of compensation may, by agreement of the parties, 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

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

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

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

26 (h) After both parties have agreed to arbitrate,  
27 should either party, except by mutual agreement, fail to abide

by the time limitations as prescribed in subsections (c), (e), and (f) of this section, 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 11. A wholesaler may not waive any of the rights granted in any provision of this act and the provisions of any agreement which would have such an effect shall be null and void. Nothing in this act shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.

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

(b) 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

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

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

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

24 (c) This act imposes upon a supplier the duty to  
25 deal fairly and in good faith with a wholesaler which has  
26 entered into an agreement with the supplier to purchase and  
27 sell a brand or brands of wine sold by the supplier. Except as

1 otherwise provided in this act, if a court finds that a  
2 supplier has intentionally, consciously, or deliberately acted  
3 or failed to act which was not in good faith or was in bad  
4 faith either in (1) effecting an amendment, modification,  
5 termination, cancellation, or nonrenewal of any agreement; or  
6 (2) unreasonably interfering with, preventing, or unreasonably  
7 delaying the transfer of the wholesaler's business where  
8 approval of the proposed transferee is not required by this  
9 act; or (3) unreasonably withholding its consent to or  
10 approval of any assignment, transfer, or sale of a  
11 wholesaler's business, where approval of the proposed  
12 transferee is required by this act; it may, upon proof thereof  
13 by clear and convincing evidence as defined in Section 6-11-20  
14 of the Code of Alabama 1975, award exemplary or punitive  
15 damages, as well as actual damages, court costs, and  
16 reasonable attorney fees to the wholesaler who has been  
17 damaged by the action or the failure to act of the supplier.  
18 Such actions or failure to act on the part of the supplier  
19 shall constitute the tort of bad faith, and the amount of any  
20 award of punitive damages and the review thereof by the trial  
21 or appellate court shall be governed by Section 6-11-25 of the  
22 Code of Alabama 1975.

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

26 (e) Upon proper application to the court, a supplier  
27 or wholesaler may obtain injunctive relief against any

1 violation of this act. If the court grants injunctive relief  
2 or issues a temporary restraining order, bond shall not be  
3 required to be posted.

4 (f) The remedies provided by this section are  
5 nonexclusive, and nothing contained herein shall abolish any  
6 cause of action or remedy available to the supplier or the  
7 wholesaler existing on the effective date of this act.

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

13 Section 14. The provisions of this act are  
14 severable. If any part of this act is declared invalid or  
15 unconstitutional, such declaration shall not affect the part  
16 which remains.

17 Section 15. This act is cumulative, and supplements  
18 and is in addition to Sections 28-8-1 to 28-8-8, inclusive,  
19 Code of Alabama 1975.

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

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