

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

ENGROSSED

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 preserve and expand jobs in Jefferson County in the wine industry; 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 reasonable compensation upon supplier's violation of the act, including a method of voluntary arbitration; to provide for civil actions for violations, damages, and venue; to provide for the burden of proof; to provide that the wholesaler may

1 not waive rights set forth in this act; to provide that the
2 act relates to existing and future agreements with wholesalers
3 and suppliers as well as their successors and transferees; to
4 provide that this act is cumulative; and to provide for an
5 effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

9 Section 2. This act shall be operative only in
10 Jefferson County.

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

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

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

21 (c) To promote the public health, safety, and
22 welfare.

23 (d) To preserve and expand jobs in Jefferson County
24 in the wine industry.

25 Section 4. (a) The following words or phrases, or
26 the plural thereof, whenever they appear in this act, unless

1 the context clearly requires otherwise, shall have the meaning
2 ascribed to them in this section:

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

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

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

1 testamentary trustee of a deceased individual owning an
2 ownership interest in a wholesaler. Designated member also
3 includes a person appointed by the court as the guardian or
4 conservator of the property of an incapacitated individual
5 owning an ownership interest in a wholesaler.

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

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

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

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

1 (8) SUBSTANTIAL STOCKHOLDER OR SUBSTANTIAL PARTNER.

2 A stockholder of or partner in the wholesaler who owns an
3 interest of 25 percent or more of the partnership or of the
4 capital stock of a corporate wholesaler.

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

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

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

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

24 Section 5. Each supplier of wine licensed by the
25 board authorizing such licensee to sell its wine within the
26 State of Alabama shall sell its wine through wholesaler
27 licensees of the board and shall grant in writing to each of

1 its wholesalers an exclusive sales territory in accordance
2 with Chapter 8, Title 28 of the Code of Alabama 1975, as
3 amended.

4 Section 6. A supplier shall not:

5 (a) Fail to provide each wholesaler of the
6 supplier's brand or brands with a written agreement which
7 contains in total the supplier's agreement with each
8 wholesaler, and designates a specific exclusive sales
9 territory. Any agreement which is in existence on the
10 effective date of this act shall be renewed consistent with
11 this act; provided, that this act may be incorporated by
12 reference in the agreement. Provided, however, nothing
13 contained herein shall prevent a supplier from appointing, one
14 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 such wholesaler who is
18 designated to service the sales territory during this period
19 of temporary service shall not be in violation of the act,
20 and, with respect to the temporary service territory, shall
21 not have any of the rights provided under Sections 8 and 10 of
22 this act.

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

25 (c) 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 (d) 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 (e) 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 (f) 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 (g) 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 (h) 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.
6 Provided, however, the wholesaler has agreed to distribute a
7 brand or brands before the effective date of this act shall
8 continue to distribute the brand or brands in conformance with
9 this act.

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

24 (m) Require or prohibit, without just and reasonable
25 cause, any change in the manager or successor manager of any
26 wholesaler who has been approved by the supplier as of or
27 subsequent to the effective date of this act. 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 standards and qualifications previously have
7 been consistently applied to Alabama wholesalers by the
8 supplier. Provided, however, the supplier shall have the
9 burden of proving that such person fails to meet such
10 standards and qualifications which are nondiscriminatory,
11 material, and reasonable and have been consistently applied to
12 Alabama wholesalers.

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

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

1 transferee does not meet such standards and qualifications
2 which are nondiscriminatory, material, and reasonable and have
3 been consistently applied to Alabama wholesalers.

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

7 Section 7. A wholesaler shall not:

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

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

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

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

21 Section 8. (a) Notwithstanding any agreement and
22 except as otherwise provided for in this act, a supplier shall
23 not amend or modify an agreement; cause a wholesaler to resign
24 from an agreement; or cancel, terminate, fail to renew, or
25 refuse to continue under an agreement, unless, in any of the
26 foregoing cases, the supplier has complied with all of the
27 following:

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

3 (2) Has acted in good faith.

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

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

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

24 (1) A statement of intention to amend, modify,
25 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 subsection (a) (3) of this
10 section 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) not more than 18 months
17 before the date notification was given pursuant to subsection
18 (a) (1) of this section.

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

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) of this
4 section, a supplier may terminate, cancel, fail to renew, or
5 discontinue an agreement immediately upon written notice given
6 in the manner and containing information required by
7 subsection (c) of this section 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 the
21 United States Code or the laws of any state which reasonably
22 may adversely affect the good will or the interest of the
23 wholesaler or supplier. However, an existing stockholder or
24 stockholders, or partner or partners, or a designated member
25 or members, shall have, subject to the provisions of this act,
26 the right to purchase the partnership interest or the stock of
27 the offending partner or stockholder prior to the conviction

1 of the offending partner or stockholder and if the sale is
2 completed prior to conviction the provisions of this
3 subdivision (3) shall not apply.

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

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

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

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

1 delinquency and demand for immediate payment from the
2 supplier.

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

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

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

25 (g) Notwithstanding subsections (a), (c), (e), and
26 (f) of this section, a supplier may terminate, cancel, not
27 renew, or discontinue an agreement upon not less than 30 days'

1 prior written notice if the supplier discontinues production
2 or discontinues distribution in this state of all brands sold
3 by the supplier to the wholesaler. Provided, however, nothing
4 in this section shall prohibit a supplier from: (1) upon not
5 less than 30 days' notice, discontinuing the distribution of
6 any particular brand of wine; or (2) conducting test marketing
7 of a new brand of wine or of a brand of wine which is not
8 currently being sold in this state, provided that the supplier
9 has notified the board in writing of its plan to test market,
10 which notice shall describe the market area in which the test
11 shall be conducted; the name or names of the wholesaler or
12 wholesalers who will be selling the wine; the name or names of
13 the brand of wine being tested; and the period of time not to
14 exceed 18 months during which the testing will take place.

15 Section 9. (a) Upon written notice of intent to
16 transfer the wholesaler's business, any individual owning or
17 deceased individual who owned an interest in a wholesaler may
18 transfer the wholesaler's business to a designated member, or
19 any other person who meets the nondiscriminatory, material,
20 and reasonable qualifications and standards required by the
21 supplier for Alabama wholesalers. The consent or approval of
22 the supplier shall not be required of any transfer of the
23 wholesaler's business, including the assignment of
24 wholesaler's rights under the agreement, to a designated
25 member or shall not be withheld or unreasonably delayed to a
26 proposed transferee (other than a designated member) who meets
27 such nondiscriminatory, material, and reasonable

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

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

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

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

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

24 (b) The supplier shall not interfere with, prevent,
25 or unreasonably delay the transfer of the wholesaler's
26 business, including an assignment of wholesaler's rights under
27 the agreement, if the proposed transferee is a designated

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

13 Section 10. (a) Except as provided for in this act,
14 a supplier that has amended, modified, cancelled, terminated,
15 or refused to renew any agreement; or has caused a wholesaler
16 to resign from any agreement; or has interfered with,
17 prevented, or unreasonably delayed, or where required by this
18 act, has withheld or unreasonably delayed consent to or
19 approval of, any assignment or transfer of a wholesaler's
20 business, shall pay the wholesaler reasonable compensation for
21 the diminished value of the wholesaler's business, including
22 any ancillary business which has been negatively affected by
23 the act of the supplier. The value of the wholesaler's
24 business or ancillary business shall include, but not be
25 limited to, any good will. Provided, however, nothing
26 contained in this act shall give rise to a claim against the

1 supplier or wholesaler by any proposed purchaser of
2 wholesaler's business.

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

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

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

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

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

12 Section 11. A wholesaler may not waive any of the
13 rights granted in any provision of this act and the provisions
14 of any agreement which would have such an effect shall be null
15 and void. Nothing in this act shall be construed to limit or
16 prohibit good faith dispute settlements voluntarily entered
17 into by the parties.

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

22 (b) A transferee of a wholesaler that continues in
23 business as a wholesaler shall have the benefit of and be
24 bound by all terms and conditions of the agreement with the
25 supplier in effect on the date of the transfer; provided,
26 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.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Jefferson County
Legislation..... 24-APR-13

Read for the second time and placed
on the calendar 1 amendment 30-APR-13

Read for the third time and passed
as amended..... 02-MAY-13

Yeas 43, Nays 0, Abstains 53

Jeff Woodard
Clerk