

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Representative Hawkins**

# A Bill

**HOUSE BILL**

## **For An Act To Be Entitled**

8 "RELATING TO ALCOHOLIC BEVERAGES; TO PROVIDE FOR BUSINESS  
9 RELATIONS BETWEEN SUPPLIERS AND WHOLESALERS OF BEER; TO  
10 REQUIRE WRITTEN AGREEMENTS SETTING FORTH IN FULL THE  
11 SUPPLIER'S AGREEMENT WITH THE WHOLESALER, AND DESIGNATING  
12 A SPECIFIC EXCLUSIVE SALES TERRITORY; TO PROVIDE FOR  
13 PROHIBITED ACTS BY THE SUPPLIER AND BY THE WHOLESALER; TO  
14 PROVIDE FOR CONDITIONS OF AMENDMENT, MODIFICATION,  
15 RESIGNATION, CANCELLATION, TERMINATION, FAILURE TO RENEW  
16 OR REFUSAL TO CONTINUE SAID AGREEMENT; TO PROVIDE FOR THE  
17 TRANSFER OF WHOLESALER'S BUSINESS, FOR THE ESTABLISHMENT  
18 OF NON-DISCRIMINATORY MATERIAL AND REASONABLE  
19 QUALIFICATIONS AND STANDARDS BY SUPPLIER, AND PROHIBIT  
20 INTERFERENCE WITH THE TRANSFER UPON COMPLIANCE WITH THOSE  
21 STANDARDS; TO PROVIDE FOR REASONABLE COMPENSATION UPON  
22 SUPPLIER'S VIOLATION OF THE ACT, INCLUDING METHOD OF  
23 VOLUNTARY ARBITRATION; TO PROVIDE FOR CIVIL ACTIONS FOR  
24 VIOLATIONS, DAMAGES AND VENUE; TO PROVIDE FOR THE BURDEN  
25 OF PROOF; TO PROVIDE THAT THE WHOLESALER MAY NOT WAIVE  
26 RIGHTS SET FORTH IN THIS ACT; TO PROVIDE THAT THE ACT  
27 RELATES TO FUTURE AGREEMENTS, TRANSFERS OF WHOLESALER  
28 CONTINUING UNDER WRITTEN AGREEMENT, AND SUPPLIER'S  
29 SUCCESSOR; AND TO PROVIDE THIS ACT IS CUMULATIVE AND  
30 REPEALS CONFLICTING AND INCONSISTENT LAWS."

31

32 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

33

34 SECTION 1. Legislative Intent and Purpose.

35 The legislative intent and purpose of this Act is to provide a structure

1 for the business relations between a wholesaler and a supplier of beer.

2 Regulation in this area is considered necessary for the following reasons:

3 (a) To maintain stability and healthy competition in the beer industry  
4 in this state.

5 (b) To promote and maintain a sound, stable and viable 3-tier system of  
6 distribution of beer to the public.

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

8

9 SECTION 2. Definitions.

10 (A). The following words or phrases, or the plural thereof, whenever  
11 they appear in this Act, unless the context clearly requires otherwise, shall  
12 have the meaning ascribed to them in this section:

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

16 (2) ANCILLARY BUSINESS. A business owned by the wholesaler, by a  
17 substantial stockholder of a wholesaler, or by a substantial partner of a  
18 wholesaler the primary business of which is directly related to the  
19 transporting, storing, or marketing of the brand or brands of beer of a  
20 supplier with whom the wholesaler has an agreement; or a business owned by a  
21 wholesaler, a substantial stockholder of a wholesaler, or a substantial  
22 partner of a wholesaler which recycles empty beverage containers of the  
23 supplier.

24 (3) DESIGNATED MEMBER. The spouse, child, grandchild, parent,  
25 brother or sister of a deceased individual who owned an interest, including a  
26 controlling interest, in a wholesaler, or any person who inherits under the  
27 deceased individual's will, or under the laws of intestate succession of this  
28 state; or any person who or entity which has otherwise, through a valid  
29 testamentary device by the deceased individual, succeeded the deceased  
30 individual in the wholesaler's business, or has succeeded to the deceased  
31 individual's ownership interest in the wholesaler pursuant to a written  
32 contract or instrument which has been previously approved by supplier; and  
33 also includes the appointed and qualified personal representative and the  
34 testamentary trustee of a deceased individual owning an ownership interest in  
35 a wholesaler. Designated member also includes the person appointed by a court

1 as the guardian or 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 of reasonable  
4 commercial standards of fair dealing in the trade, as defined in and  
5 interpreted under the Uniform Commercial Code, Ark. Code Ann. Sec. 4-2-103  
6 (1987).

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

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

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

22 (8) SUBSTANTIAL STOCKHOLDER OR SUBSTANTIAL PARTNER. A  
23 stockholder of or partner in the wholesaler who owns an interest of ten (10)  
24 percent or more of the partnership or of the capital stock of a corporate  
25 wholesaler.

26 (9) DIRECTOR. The Director of the Alcoholic Beverage Control  
27 Division.

28 (10) SUPPLIER. A manufacturer or importer of beer and light wine  
29 brands as registered with the Director.

30 (11) TRANSFER OF WHOLESALER'S BUSINESS. The voluntary sale,  
31 assignment or other transfer of 10% or more or control of the business or all  
32 or substantially all of the assets of the wholesaler, or 10% or more or  
33 control of the capital stock of the wholesaler, including without limitation  
34 the sale or other transfer of capital stock or assets by merger, consolidation  
35 or dissolution, or of the capital stock of the parent corporation, or of the

1 capital stock or beneficial ownership of any other entity owning or  
2 controlling the wholesaler.

3 (12) WHOLESALER. A wholesaler of beer and light wine as licensed  
4 by the Board and as defined in Ark. Code Ann. Sec. 3-5-202(10).

5 (13) SIMILARLY SITUATED WHOLESALERS. Wholesalers of a supplier  
6 that are of a generally comparable size, and operate in markets with similar  
7 demographic characteristics, including population size, density, distribution,  
8 and vital statistics, as well as reasonably similar economic and geographic  
9 conditions.

10 (14) BEER. Beer shall include light wine and shall carry the same  
11 definitions as set forth in Ark. Code Ann. Sec. 3-5-202 (3) and (4).

12 (B). Other words and phrases used in this act shall have the meanings  
13 ascribed to them in Ark. Code Ann. Sec. 3-1-102 and 3-5-202 (1987), as amended  
14 and any acts amendatory thereof, supplementary thereto or substituted  
15 therefor, unless the context clearly requires otherwise.

16

17 SECTION 3. Prohibited acts by supplier. A supplier shall not do the  
18 following:

19 (a) Fail to provide each wholesaler of the supplier's brand or brands  
20 with a written agreement which contains in total the supplier's agreement with  
21 each wholesaler, and designates a specific exclusive sales territory. Any  
22 agreement which is in existence on the effective date of this Act shall be  
23 renewed consistent with this Act, provided that this Act may be incorporated  
24 by reference in the agreement. Provided, however, nothing contained herein  
25 shall prevent a supplier from appointing, one time for a period not to exceed  
26 90 days, a wholesaler to temporarily service a sales territory not designated  
27 to another wholesaler, until such time as a wholesaler is appointed by the  
28 supplier; and such wholesaler who is designated to service the sales territory  
29 during this period of temporary service shall not be in violation of the Act,  
30 and, with respect to the temporary service territory, shall not have any of  
31 the rights provided under Sections 5 and 7 of this Act.

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

34 (c) Enter into an additional agreement with any other wholesaler for,  
35 or to sell to any other wholesaler, the same brand or brands of beer in the

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

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

8 (e) Require any wholesaler to accept delivery of any beer or other  
9 commodity ordered by a wholesaler if the order was properly cancelled by the  
10 wholesaler in accordance with the supplier's procedures.

11 (f) Require any wholesaler to do any illegal act or to violate any law  
12 or regulation by threatening to amend, modify, cancel, terminate, or refuse to  
13 renew any agreement existing between the supplier and wholesaler.

14 (g) Require a wholesaler to assent to any condition, stipulation, or  
15 provision limiting the wholesaler's right to sell the brand or brands of beer  
16 of any other supplier unless the acquisition of the brand or brands of another  
17 supplier would materially impair or adversely affect the wholesaler's quality  
18 of service, sales or ability to compete effectively in representing the brand  
19 or brands of the supplier presently being sold by the wholesaler; provided the  
20 supplier shall have the burden of proving that such acquisition of such other  
21 brand or brands would have such effect.

22 (h) Require a wholesaler to purchase one or more brands of beer  
23 products in order for the wholesaler to purchase another brand or brands of  
24 beer for any reason. Provided, however, a wholesaler that has agreed to  
25 distribute a brand or brands before the effective date of this Act shall  
26 continue to distribute the brand or brands in conformance with this Act.

27 (i) Require a wholesaler to submit audited profit and loss statements,  
28 balance sheets, or financial records as a condition of renewal or continuation  
29 of an agreement.

30 (j) Withhold delivery of beer ordered by wholesaler, or change a  
31 wholesaler's quota of a brand or brands if the withholding or change is not  
32 made in good faith.

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

1           (1) Take any retaliatory action against a wholesaler that files a  
2 complaint in good faith regarding an alleged violation by the supplier of  
3 federal, state or local law or an administrative rule as a result of that  
4 complaint.

5           (m) Require or prohibit any change in the manager or successor of any  
6 wholesaler who has been approved by the supplier as of or subsequent to the  
7 effective date of this Act unless the supplier acts in good faith. Should a  
8 wholesaler change an approved manager or successor manager, a supplier shall  
9 not require or prohibit the change unless the person selected by the  
10 wholesaler fails to meet the non-discriminatory, material and reasonable  
11 standards and qualifications for managers consistently applied to similarly  
12 situated wholesalers by the supplier. Provided, however, the supplier shall  
13 have the burden of proving that such person fails to meet such standards and  
14 qualifications.

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

19           (o) Upon written notice of intent to transfer the wholesaler's business  
20 other than to a designated member, withhold consent to or approval of, or  
21 unreasonably delay (not to exceed 30 days after receipt of all material  
22 information reasonably requested) a response to a request by the wholesaler  
23 for any transfer of a wholesaler's business if the proposed transferee meets  
24 the non-discriminatory material and reasonable qualifications and standards  
25 required by the supplier for similarly situated wholesalers.

26           (p) Restrict or inhibit the right of free association among wholesalers  
27 for any lawful purpose.

28

29           SECTION 4. Prohibited acts by wholesaler. A wholesaler shall not do  
30 any of the following:

31           (a) Fail to devote such efforts and resources to the sale and  
32 distribution of all the supplier's brands of beer which the wholesaler has  
33 been granted the right to sell or distribute as are required in the  
34 wholesaler's agreement with the supplier.

35           (b) Sell or deliver beer to a retail licensee located outside the

1 sales territory designated to the wholesaler by the supplier of a particular  
2 brand or brands of beer. Provided, however, during periods of temporary  
3 service interruptions impacting a particular sales territory, a supplier may  
4 appoint another wholesaler to service the sales territory during the period of  
5 temporary service interruption. A wholesaler who is designated to service the  
6 impacted sales territory during the period of temporary service interruption  
7 shall not be in violation of this Act, and shall not have any of the rights  
8 provided under sections 5 and 7 of this Act with respect to the temporary  
9 service territory.

10 (c) Transfer the wholesaler's business without giving the  
11 supplier written notice of intent to transfer the wholesaler's business and,  
12 where required by this Act, receiving the supplier's approval for the proposed  
13 transfer. Provided, consent or approval of the supplier shall not be required  
14 of any transfer of the wholesaler's business to a designated member, or of any  
15 transfer of less than 10% of the wholesaler's business unless such transfer  
16 results in a change in control. Provided, however, that the wholesaler shall  
17 give the supplier written notice of any change in ownership of the wholesaler.  
18

19 SECTION 5. Conditions of amendment, modification, resignation,  
20 cancellation, termination, failure to renew or refusal to continue agreement.

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

26 (1) Has satisfied the applicable notice requirements of this  
27 section.

28 (2) Has acted in good faith.

29 (3) Has good cause for the amendment, modification, cancellation,  
30 termination, nonrenewal, discontinuance, or forced resignation.

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

1 discontinuance.

2 (C). Notwithstanding any agreement and except as otherwise provided in  
3 this section, and in addition to the time limits set forth in subsection  
4 (D)(4) of this section, the supplier shall furnish written notice of the  
5 amendment, modification, termination, cancellation, nonrenewal or  
6 discontinuance of an agreement to the wholesaler not less than 30 days before  
7 the effective date of the amendment, modification, termination, cancellation,  
8 nonrenewal, or discontinuance. The notice shall be by certified mail and  
9 shall contain all of the following:

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

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

14 (3) The date on which the amendment, modification, termination,  
15 cancellation, nonrenewal, or discontinuance takes effect.

16 (D). Notwithstanding any agreement, good cause shall exist for the  
17 purposes of a termination, cancellation, nonrenewal, or discontinuance under  
18 subsection (A)(3) of this section when all of the following occur:

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

23 (2) The supplier first acquired knowledge of the failure  
24 described in subdivision (1) not more than twenty-four (24) months before the  
25 date notification was given pursuant to subsection (C) of this section.

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

28 (4) The wholesaler has been afforded 30 days in which to submit a  
29 plan of corrective action to comply with the agreement and an additional 90  
30 days to cure such noncompliance in accordance with the plan.

31 (E). Notwithstanding subsections (A) and (C) of this section, a  
32 supplier may terminate, cancel, fail to renew, or discontinue an agreement  
33 immediately upon written notice given in the manner and containing the  
34 information required by subsection (C) of this section if any of the following  
35 occur:



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

6           (2) Revocation or suspension of the wholesaler's state or federal  
7 license by the appropriate regulatory agency whereby the wholesaler cannot  
8 service the wholesaler's sales territory for more than 31 days.

9           (3) The wholesaler, or a partner or an individual who owns ten  
10 (10) percent or more of the partnership or stock of a corporate wholesaler,  
11 has been convicted of a felony under the United States Code or the laws of any  
12 state which reasonably may adversely affect the good will or interest of the  
13 wholesaler or supplier. However, an existing stockholder or stockholders, or  
14 partner or partners, or a designated member or members, shall have, subject to  
15 the provisions of this Act, the right to purchase the partnership interest or  
16 the stock of the offending partner or stockholder prior to the conviction of  
17 the offending partner or stockholder and if the sale is completed prior to  
18 conviction the provisions of this subdivision (3) shall not apply.

19           (4) There was fraudulent conduct relating to a material matter on  
20 the part of the wholesaler in dealings with the supplier or its product.  
21 Provided, however, the supplier shall have the burden of proving fraudulent  
22 conduct relating to a material matter on the part of the wholesaler in any  
23 legal action challenging such termination.

24           (5) The wholesaler failed to confine to the designated sales  
25 territory its sales of a brand or brands to retailers provided this subsection  
26 (E) (5) of this section does not apply if there is a dispute between two or  
27 more wholesalers as to the boundaries of the assigned territory, and the  
28 boundaries cannot be determined by a reading of the description contained in  
29 the agreements between the supplier and the wholesalers.

30           (6) A wholesaler has failed to pay for beer ordered and delivered  
31 in accordance with established terms and the wholesaler fails to make full  
32 payment within two (2) business days after receipt of written notice of the  
33 delinquency and demand for immediate payment from the supplier.

34           (7) A wholesaler intentionally has made a transfer of  
35 wholesaler's business, other than a transfer to a designated member without

1 prior written notice to the supplier, and has failed within thirty (30) days  
2 from the receipt of written notice from the supplier of its intent to  
3 terminate on the ground of such transfer, to reverse said transfer of  
4 wholesaler's business.

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

9 (9) The wholesaler intentionally ceases to carry on business with  
10 respect to any of supplier's brand or brands previously serviced by wholesaler  
11 in its territory designated by the supplier, unless such cessation is due to  
12 force majeure or to labor dispute and the wholesaler has made good faith  
13 efforts to overcome such events. Provided, however, this shall affect only  
14 that brand or brands with respect to which the wholesaler ceased to carry on  
15 business.

16 (F). Notwithstanding subsections (A), (C), and (E) of this section, a  
17 supplier may terminate, cancel, not renew, or discontinue an agreement upon  
18 not less than 30 days prior written notice if the supplier discontinues  
19 production or discontinues distribution in this state of all the brands sold  
20 by the supplier to the wholesaler. Provided, however, nothing in this section  
21 shall prohibit a supplier from: (i) upon not less than thirty (30) days  
22 notice, discontinuing the distribution of any particular brand or package of  
23 beer; or (ii) conducting test marketing of a new brand of beer which is not  
24 currently being sold in this state, provided that the supplier has notified  
25 the Director in writing of its plans to test market, which notice shall  
26 describe the market area in which the test shall be conducted; the name or  
27 names of the wholesaler or wholesalers who will be selling the beer; the name  
28 or names of the brand of beer being tested; and the period of time, not to  
29 exceed eighteen (18) months, during which the testing will take place.

30

31 SECTION 6. Transfer of wholesaler's business; interference prohibited.

32 (A). Upon written notice of intent to transfer the wholesaler's  
33 business, any individual owning or deceased individual who owned an interest  
34 in a wholesaler may transfer the wholesaler's business to a designated member,  
35 or to any other person who meets the non-discriminatory material and

1 reasonable qualifications and standards required by the supplier for similarly  
2 situated wholesalers. The consent or approval of the supplier shall not be  
3 required of any transfer of the wholesaler's business, including the  
4 assignment of the wholesaler's rights under the agreement, to a designated  
5 member or shall not be withheld or unreasonably delayed to a proposed  
6 transferee who meets such non-discriminatory, material and reasonable  
7 qualifications and standards. Provided, such designated member or transferee  
8 shall in no event be qualified as a transferee, without the written approval  
9 or consent of the supplier, where such proposed transferee shall have been  
10 involved in any of the following:

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

14           (2) Revocation or suspension of an alcoholic beverage license by  
15 the regulatory agency of the U. S. Government or any state, whereby service  
16 was interrupted for more than thirty-one (31) days; or

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

21           (4) Had an agreement involuntarily terminated, cancelled, not  
22 renewed, or discontinued by a supplier for good cause.

23           (B). The supplier shall not interfere with, prevent or unreasonably  
24 delay the transfer of the wholesaler's business, including an assignment of  
25 wholesaler's rights under the agreement, if the proposed transferee is a  
26 designated member, or if the transferee other than a designated member, or if  
27 the transferee other than a designated member meets such non-discriminatory,  
28 material and reasonable qualifications and standards required by the supplier  
29 for similarly situated wholesalers. Where the transferee is other than a  
30 designated member, the supplier may in good faith and for good cause related  
31 to the reasonable qualifications refuse to accept the transfer of the  
32 wholesaler's business or the assignment of the wholesaler's rights under the  
33 agreement.

34

35           SECTION 7. Reasonable compensation upon supplier's violation;

1 arbitration.

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

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

19 (C). Not more than ten (10) business days after the notice to enter  
20 into arbitration has been delivered, the other party shall send written notice  
21 to the requesting party declaring its intention either to proceed or not to  
22 proceed with arbitration. Should the other party fail to respond within ten  
23 (10) business days, it shall be conclusively presumed that said party shall  
24 have agreed to arbitration.

25 (D). The matter of determining the amount of compensation may, by  
26 agreement of the parties, be submitted to a three (3) member arbitration panel  
27 consisting of one (1) representative selected by the supplier but unassociated  
28 with the affected supplier; one (1) wholesaler representative selected by the  
29 wholesaler but unassociated with the wholesaler; and an impartial arbitrator.

30 (E). Not more than ten (10) business days after mutual agreement of  
31 both parties has been reached to arbitrate, each party shall designate, in  
32 writing, its one (1) arbitrator representative and the party initiating  
33 arbitration shall request, in writing, a list of five (5) arbitrators from the  
34 American Arbitration Association or its successor and request that the list be  
35 mailed to each party by certified mail, return receipt requested. Not more

1 than ten (10) business days after the receipt of the list of five (5) choices,  
2 the wholesaler arbitrator and the supplier arbitrator shall strike and  
3 disqualify up to two (2) names each from the list. Should either party fail  
4 to respond within the ten (10) business days or should more than one (1) name  
5 remain after the strikes, the American Arbitration Association shall make the  
6 selection of the impartial arbitrator from the names not stricken from said  
7 list.

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

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

18 (H). After both parties have agreed to arbitrate should either party,  
19 except by mutual agreement, fail to abide by the time limitations as  
20 prescribed in subsections (C), (E), and (F) of this section, or fail or refuse  
21 to make the selection of any arbitrators, or fail to participate in the  
22 arbitration hearings, the other party shall make the selection of its  
23 arbitrators and proceed to arbitration. The party who has failed or refused  
24 to comply as prescribed in this section shall be considered to be in default.  
25 Any party considered to be in default pursuant to this subsection shall have  
26 waived any and all rights the party would have had in the arbitration and  
27 shall be considered to have consented to the determination of the arbitration  
28 panel.

29

30 SECTION 8. Wholesaler may not waive rights; agreement to waive void.

31 A wholesaler may not waive any of the rights granted in any provision of  
32 this Act and the provisions of any agreement which would have such an effect  
33 shall be null and void. Nothing in this Act shall be construed to limit or  
34 prohibit good faith dispute settlements voluntarily entered into by the  
35 parties.

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SECTION 9. Applies to future agreements; transferee continues under agreement.

(A). This Act shall apply to 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 supplier's consent or approval but is disapproved by the supplier shall be null and void.

SECTION 10. Civil action for violations; damages; venue.

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

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

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

(D). Upon proper application to the court, a supplier or wholesaler may obtain injunctive relief against any violation of this Act.

(E). Any legal action taken under this Act, or in a dispute over the provisions of an agreement shall be filed in a court, state or federal, located in Arkansas, which state court is located in, or which federal court has jurisdiction and venue of, the county in which the wholesaler maintains its principal place of business in this state.

SECTION 11. Non-waiver.

No right or cause of action authorized by Arkansas law shall be waived by the supplier or wholesaler unless specifically waived in this agreement.

1 SECTION 12. Cumulative.

2 This Act is cumulative and supplements and is in addition to Title 3,  
3 Arkansas Code of 1987 Annotated, and Title 4, Chapter 72, Subchapter 2,  
4 Arkansas Code of 1987 Annotated, as amended.

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6 SECTION 13. All provisions of this Act of a general and permanent  
7 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
8 Code Revision Commission shall incorporate the same in the Code.

9

10 SECTION 14. If any provision of this Act or the application thereof to  
11 any person or circumstance is held invalid, such invalidity shall not affect  
12 other provisions or applications of the Act which can be given effect without  
13 the invalid provision or application, and to this end the provisions of this  
14 Act are declared to be severable.

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16 SECTION 15. Repealer

17 All laws or parts of laws which conflict with this Act or which are  
18 inconsistent with this Act as it relates to beer wholesalers are hereby  
19 repealed.

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21 SECTION 16. Emergency

22 It is hereby found and determined by the General Assembly that present  
23 law does not adequately protect wholesalers of beer and light wine from  
24 arbitrary actions of suppliers; that this Act provides such protection; and  
25 that until this Act goes into effect the Arkansas wholesalers will be  
26 susceptible to arbitrary actions of the suppliers. Therefore, an emergency is  
27 hereby declared to exist and this Act being necessary for the preservation of  
28 the public peace, health and safety shall be in full force and effect from and  
29 after its passage and approval.

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