

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

**A Bill ACT 8 OF 1991**  
**SENATE BILL 46**

**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  
27 WHOLESALER MAY NOT WAIVE RIGHTS SET FORTH IN THIS ACT; TO  
28 PROVIDE THAT THE ACT RELATES TO FUTURE AGREEMENTS,  
29 TRANSFERS OF WHOLESALER CONTINUING UNDER WRITTEN  
30 AGREEMENT, AND SUPPLIER'S SUCCESSOR; AND TO PROVIDE THIS  
31 ACT IS CUMULATIVE AND REPEALS CONFLICTING AND INCONSISTENT  
32 LAWS."

33  
34 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

35

36 SECTION 1. Legislative Intent and Purpose.

1           The legislative intent and purpose of this Act is to provide a structure  
2 for the business relations between a wholesaler and a supplier of beer.

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

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

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

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

9

10           SECTION 2. Definitions.

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

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

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

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

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

4 (4) GOOD FAITH. Honesty in fact and the observance of reasonable  
5 commercial standards of fair dealing in the trade, as defined in and  
6 interpreted under the Uniform Commercial Code, Ark. Code Ann. Sec. 4-2-103  
7 (1987).

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

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

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

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

27 (9) DIRECTOR. The Director of the Alcohol Beverage Control  
28 Division.

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

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

1 or dissolution, or of the capital stock of the parent corporation, or of the  
2 capital stock or beneficial ownership of any other entity owning or  
3 controlling the wholesaler.

4 (12) WHOLESALER. A wholesaler of beer licensed by the Board.

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

14

15 SECTION 3. Prohibited acts by supplier. A supplier shall not do the  
16 following:

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

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

32 (c) Enter into an additional agreement with any other wholesaler for,  
33 or to sell to any other wholesaler, the same brand or brands of beer in the  
34 same territory or any portion thereof, or to sell directly to any retailer in  
35 this state.

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

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

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

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

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

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

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

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

34 (l) Take any retaliatory action against a wholesaler that files a  
35 complaint in good faith regarding an alleged violation by the supplier of

1 federal, state or local law or an administrative rule as a result of that  
2 complaint.

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

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

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

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

26

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

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

33 (b) Sell or deliver beer to a retail licensee located outside the  
34 sales territory designated to the wholesaler by the supplier of a particular  
35 brand or brands of beer. Provided, however, during periods of temporary

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

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

16  
17 SECTION 5. Conditions of amendment, modification, resignation,  
18 cancellation, termination, failure to renew or refusal to continue agreement.

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

- 24 (1) Has satisfied the applicable notice requirements of this  
25 section.
- 26 (2) Has acted in good faith.
- 27 (3) Has good cause for the amendment, modification, cancellation,  
28 termination, nonrenewal, discontinuance, or forced resignation.

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

35 (C). Notwithstanding any agreement and except as otherwise provided in

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

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

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

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

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

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

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

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

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

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

34           (1) Insolvency of the wholesaler, the filing of any petition by  
35 or against the wholesaler under any bankruptcy or receivership law, or the



1 assignment for the benefit of creditors or dissolution or liquidation of the  
2 wholesaler which materially affects the wholesaler's ability to remain in  
3 business.

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

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

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

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

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

32           (7) A wholesaler intentionally has made a transfer of  
33 wholesaler's business, other than a transfer to a designated member without  
34 prior written notice to the supplier, and has failed within thirty (30) days  
35 from the receipt of written notice from the supplier of its intent to

1 terminate on the ground of such transfer, to reverse said transfer of  
2 wholesaler's business.

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

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

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

28  
29 SECTION 6. Transfer of wholesaler's business; interference prohibited.

30 (A). Upon written notice of intent to transfer the wholesaler's  
31 business, any individual owning or deceased individual who owned an interest  
32 in a wholesaler may transfer the wholesaler's business to a designated member,  
33 or to any other person who meets the non-discriminatory material and  
34 reasonable qualifications and standards required by the supplier for similarly  
35 situated wholesalers. The consent or approval of the supplier shall not be

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

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

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

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

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

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

32           SECTION 7. Reasonable compensation upon supplier's violation;  
33 arbitration.

34           (A). Except as provided for in this Act, a supplier that has amended,  
35 modified, cancelled, terminated or refused to renew any agreement; or caused a

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

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

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

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

27 (E). Not more than ten (10) business days after mutual agreement of  
28 both parties has been reached to arbitrate, each party shall designate, in  
29 writing, its one (1) arbitrator representative and the party initiating  
30 arbitration shall request, in writing, a list of five (5) arbitrators from the  
31 American Arbitration Association or its successor and request that the list be  
32 mailed to each party by certified mail, return receipt requested. Not more  
33 than ten (10) business days after the receipt of the list of five (5) choices,  
34 the wholesaler arbitrator and the supplier arbitrator shall strike and  
35 disqualify up to two (2) names each from the list. Should either party fail

1 to respond within the ten (10) business days or should more than one (1) name  
2 remain after the strikes, the American Arbitration Association shall make the  
3 selection of the impartial arbitrator from the names not stricken from said  
4 list.

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

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

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

26

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

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

33

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

1 (A). This Act shall apply to agreements entered into or renewed after  
2 the effective date of this Act.

3 (B). A transferee of a wholesaler that continues in business as a  
4 wholesaler shall have the benefit of and be bound by all terms and conditions  
5 of the agreement with the supplier in effect on the date of the transfer;  
6 provided, however, a transfer of a wholesaler's business which requires  
7 supplier's consent or approval but is disapproved by the supplier shall be  
8 null and void.

9

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

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

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

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

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

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

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29 SECTION 11. Non-waiver.

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

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33 SECTION 12. Cumulative.

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

1 Arkansas Code of 1987 Annotated, as amended.

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

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

SECTION 15. Repealer  
All laws or parts of laws which conflict with this Act or which are inconsistent with this Act as it relates to beer wholesalers are hereby repealed.

SECTION 16. Emergency  
This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

APPROVED: 1-31-91

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