

As Engrossed: 2/4/91

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

A BILL ACT 260 OF 1991
SENATE BILL 242

For An Act To Be Entitled

8 "AN ACT TO PROVIDE FOR THE BUSINESS RELATIONSHIPS BETWEEN
9 LICENSED ARKANSAS WHOLESALE DISTRIBUTORS OF LIQUOR AND
10 WINE AND THEIR SUPPLIERS; TO REQUIRE THAT ALL BRANDS OF
11 LIQUOR AND WINE WHICH ARE OFFERED FOR SALE IN ARKANSAS BE
12 REGISTERED AND FILED WITH THE ARKANSAS ALCOHOLIC BEVERAGE
13 CONTROL DIVISION; TO ESTABLISH PROCEDURES TO BE FOLLOWED
14 BY SUPPLIERS WHO DESIRE TO CHANGE WHOLESALE DISTRIBUTORS;
15 AND FOR OTHER PURPOSES."

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

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19 SECTION 1. Purpose. This act is promulgated pursuant to the authority
20 granted to the State of Arkansas pursuant to the provisions of the Twenty-
21 First Amendment to the United States Constitution specifically for the
22 following purposes:

23 (a) To prevent unfair business practices, discrimination and undue
24 control of such wholesalers by distillers, manufacturers, importers and
25 producers;

26 (b) To maintain stability and healthy competition in the alcoholic
27 beverage industry;

28 (c) To promote and maintain a sound and stable system of distribution
29 of alcoholic beverages; and

30 (d) To promote the public health, safety and welfare.

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32 SECTION 2. Every manufacturer, importer or producer of spirituous and
33 vinous beverages, as defined by Ark. Code Ann. §3-1-102, doing business in the
34 State of Arkansas shall submit to the ABC Division one (1) label for each
35 brand of spirituous and vinous beverages to be shipped for the first time by
36 the shipper into or within the state and shall designate in the application

1 for registration one (1) licensed liquor wholesaler in the state, who shall be
2 the exclusive distributor of such brand or label within the state. Such
3 designated wholesaler shall be initially approved by the Director and shall
4 not be changed nor initially disapproved except for good cause, and the
5 Director shall determine good cause after a hearing pursuant to the provisions
6 set out in this act. Any brands or labels previously registered in this
7 state, and which have subsequently been withdrawn from distribution in this
8 state, shall be treated in the same manner as the initial registration of
9 brands or labels and are subject to the provisions hereof.

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11 SECTION 3. Any distiller, manufacturer, importer or producer desiring
12 to change wholesalers with respect to any brand shall file with the Director a
13 Wholesaler Change Request containing such of the following information as is
14 applicable:

15 (a) The name of each brand involved;

16 (b) The case volume in Arkansas for each brand for the current year or
17 portion thereof and the two (2) previous calendar years;

18 (c) The name of the wholesaler currently distributing such brand;

19 (d) The name of the proposed new wholesaler; and

20 (e) A detailed explanation of the specific business reasons for the
21 request to change wholesalers. Business reasons which may be considered by
22 the Director in determining good cause for authorizing a change of wholesalers
23 will include:

24 (1) A wholesaler's bankruptcy or serious financial instability,
25 including its consistent failure to pay its debts as they fall due or its
26 failure to meet or maintain any objective standards of capitalization
27 expressly agreed to between the wholesaler and the distiller, manufacturer,
28 importer or producer, provided such standards are determined by the Director
29 to be commercially reasonable;

30 (2) A wholesaler's repeated violations of any provision of
31 federal or state law or regulations, whether or not such violations resulted
32 in official action;

33 (3) A wholesaler's failure to maintain reasonable sales volume of
34 the brand, taking into consideration such factors as the extent of the
35 distiller's, manufacturer's, importer's or producer's advertising and
36 promotion of the particular brand, prevailing economic conditions affecting

1 sales generally or the extent of the wholesaler's efforts, or lack thereof, to
2 promote a particular brand; and

3 (4) Any other factors relevant to such proposed change and which
4 aid the Director in determining good cause.

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6 SECTION 4. At the same time that the original Wholesaler Change Request
7 is filed with the Director, a copy thereof shall be mailed by the distiller,
8 manufacturer, importer or producer to each wholesaler who may be affected by
9 the proposed changes. Immediately upon receipt of any Wholesaler Change
10 Request, the Director shall notify the currently designated wholesaler of the
11 request by certified mail. Within fifteen (15) days after receipt of such
12 notice by the affected wholesaler any such wholesaler or party required to be
13 given notice by this act may interpose written objections thereto. Such
14 written objections shall be filed in the office of the Alcoholic Beverage
15 Control Division and copies thereof shall be served by the objecting party
16 upon the party proposing the change and upon all wholesalers who may be
17 affected by the proposed change.

18 (a) Upon the receipt of an objection from any party, or upon his own
19 motion, the Director shall hold a hearing, after providing due notice to all
20 parties concerned, for the purpose of determining the truth of any matters of
21 fact alleged by any party and determining whether the proposed changes are
22 based upon sufficient cause and are otherwise consistent with the policies
23 set out in Section 1 above. If it is determined from the evidence educed at
24 said hearing that the brand or label involved is the same as, or similar to,
25 or is such a modification of, substitution of, upgrade of or extension of a
26 brand or label which has already been registered by the distiller,
27 manufacturer, importer or producer, so as to render it unjust or inequitable
28 (without cause being shown) to designate the brand or label to a wholesaler
29 different from the wholesaler designated for the brand or label being so
30 modified, substituted, upgraded or extended, then such request shall be
31 denied; provided, however, that nothing herein shall be construed or prevent
32 the distiller, manufacturer, importer or producer from treating the matter as
33 a desire to change wholesalers, and from proceeding under the provisions of
34 Section 3 above, either before or after such determination.

35 (b) No proposed change will be approved by the Director which is based
36 upon the failure or refusal of a wholesaler to comply with any demand or

1 request of a distiller, manufacturer, importer or producer where such demand
2 or request would result in a violation of any provision of federal or state
3 law or regulation. During such fifteen (15) day objection period, or until
4 the proposed changes have been finally approved by the Director, the party
5 proposing the change shall continue to supply the designated wholesaler, upon
6 commercially reasonable terms, such reasonable quantities of the brand
7 involved as the wholesaler may require. If, at any time, the Director finds a
8 distiller, manufacturer, importer or producer is not shipping the wholesaler a
9 reasonable amount of merchandise, he may withdraw approval of all brands
10 registered by such parties within the state.

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12 SECTION 5. Any hearing held by the Director pursuant to the provisions
13 of Section 4 above shall be held within thirty (30) days after the receipt of
14 any notice of objection to a Wholesaler Change Request. The findings of the
15 Director made after such hearing shall be presented to the Alcoholic Beverage
16 Control Board at its next regularly scheduled meeting. Any aggrieved party
17 may appeal the decision of the Director to the full Board to be heard do novo
18 and any such appeal hearing will be scheduled and held pursuant to hearing
19 procedures established for the Alcoholic Beverage Control Division by state
20 law and ABC Regulations.

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22 SECTION 6. If no objection is filed to the Wholesaler Change Request as
23 provided in Section 5 above, the proposed changes shall stand automatically
24 approved by the Director at the expiration of such fifteen (15) day period,
25 conditioned upon the manufacturer or importer repurchasing all inventory of
26 the subject brand from the previously designated wholesaler at such
27 wholesaler's laid-in cost.

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29 SECTION 7. Any distiller, manufacturer, importer or producer who
30 obtains or acquires in any manner the right to sell, ship or distribute any
31 label shall for the purpose of this act stand in place of, and be subject to,
32 all rights, privileges, and duties and obligations of its predecessor or its
33 predecessors from whom such brands or labels were obtained or acquired.

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35 SECTION 8. Every manufacturer or importer of beer or other malt
36 products or light wine doing business in the State of Arkansas shall submit to

1 the ABC Division (1) one label for each brand of beer or malt product or light
2 wine to be shipped for the first time into or within the state and shall
3 designate within the application for registration any number of wholesalers in
4 the state, each of whom shall be the exclusive distributor of such brand
5 within the geographical territory assigned by the manufacturer or importer to
6 such wholesaler. Transfers of brands of malt products or light wine or
7 changes in geographical distribution areas assigned shall not be subject to
8 the provisions set out above for spirituous or vinous products, so long as any
9 such manufacturer or importer has complied with the filing provisions of
10 applicable law.

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12 SECTION 9. An unlawful dual distributorship is created whenever any
13 manufacturer designates as its distributor more than one (1) Arkansas liquor
14 wholesaler in the state or wholesale beer permit holder to distribute the same
15 brand of alcoholic beverage in the same geographical territory (city, county,
16 counties, state). The creation of such dual distributorship is prohibited.
17 In addition to any remedies to any aggrieved party authorized by law, the
18 Director may withdraw approval of any and all brands registered by any
19 manufacturer found to be in violation of this act, such findings to be made
20 after hearing pursuant to hearing procedures established for the Alcoholic
21 Beverage Control Division by state law and administrative regulations.

22 For the purpose of this act a "brand" is defined as the same product or
23 substantially the same product, as evidenced by the product label that must be
24 filed with the Alcoholic Beverage Control Division. Identical or
25 substantially identical labels will be considered and treated as the same
26 brand.

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28 SECTION 10. *A successor to a distiller, manufacturer, importer,*
29 *producer, winery or brewer of beer, malt liquor, light wine, wine, or liquor*
30 *that continues in business as a distiller, manufacturer, importer, producer,*
31 *winery or brewery or that continues to operate under the names of any product*
32 *acquired by said distiller, manufacturer, importer, producer, winery, or*
33 *brewer shall be bound by all terms and conditions of any agreements with any*
34 *Arkansas wholesaler, whether oral or written, of the distiller, manufacturer,*
35 *importer, producer, winery or brewery which are in effect on the date of*
36 *succession.*

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SECTION 11. *This act does not repeal nor supersede any of the provisions of Act 8 of 1991 and to the extent of any conflict, the provisions of Act 8 shall prevail.*

SECTION 12. The terms, conditions and requirements of this act are hereby expressly made a part of the terms of and as conditions to the approval granted by the Arkansas Alcoholic Beverage Control Division to distillers, manufacturers, importers or producers to do business in the state and by the application for, the acceptance of, or the conduct of business under any such approval, a distiller, manufacturer, importer or producer consents and agrees to comply with the terms, conditions and requirements of this act. This act does not apply to manufacturers or wholesalers of Arkansas native wine.

SECTION 13. No right, duty or other provision set out in this act may be waived by any agreement or contract between any wholesaler and supplier regardless of whether any such waiver agreement was made prior to or after the effective date of this act.

SECTION 14. 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 15. 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 16. All laws, parts or laws or administrative regulations which are in conflict with the provisions of this act are hereby repealed.

/s/Dowd

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APPROVED: 2/27/91