

# SENATE BILL No. 656

November 1, 1989, Introduced by Senators MILLER, GAST,  
GEO. HART, ARTHURHULTZ, POSTHUMUS, BARCIA and O'BRIEN  
and referred to the Committee on Commerce and Technology.

A bill to amend sections 30b and 30c of Act No. 8 of the  
Public Acts of the Extra Session of 1933, entitled as amended  
"The Michigan liquor control act,"  
as added by Act No. 159 of the Public Acts of 1984, being sec-  
tions 436.30b and 436.30c of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 30b and 30c of Act No. 8 of the Public  
2 Acts of the Extra Session of 1933, as added by Act No. 159 of the  
3 Public Acts of 1984, being sections 436.30b and 436.30c of the  
4 Michigan Compiled Laws, are amended to read as follows:

5       Sec. 30b. (1) The purpose of this section is to provide a  
6 structure for the business relations between a wholesaler OF BEER  
7 and a supplier OF BEER. Regulation in this area is considered  
8 necessary for the following reasons:

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

3 (b) To promote and maintain a sound, stable, and viable  
4 3-tier system of distribution of beer to the public.

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

6 (2) As used in this section, unless the context requires  
7 otherwise:

8 (a) "Agreement" means any agreement between a wholesaler and  
9 a supplier, whether oral or written, whereby a wholesaler is  
10 granted the right to offer and sell a brand or brands of beer  
11 sold by a supplier.

12 (b) "Ancillary business" means a business owned by a whole-  
13 saler, a stockholder of a wholesaler, or a partner of a whole-  
14 saler the primary purpose of which is directly related to the  
15 transporting, storing, or marketing of the brand or brands of  
16 beer of a supplier with whom the wholesaler has an agreement; or  
17 a business owned by a wholesaler, a stockholder of a wholesaler,  
18 or a partner of a wholesaler which recycles empty returnable bev-  
19 erage containers.

20 (c) "Designated member" means the spouse, child, grandchild,  
21 parent, brother, or sister of a deceased individual who owned an  
22 interest in a wholesaler, who is entitled to inherit the deceased  
23 individual's ownership interest in the wholesaler under the terms  
24 of the deceased individual's will, or who has otherwise been des-  
25 ignated in writing by the deceased individual to succeed the  
26 deceased individual in the wholesaler's business, or is entitled  
27 to inherit such ownership interest under the laws of intestate

1 succession of this state. With respect to an incapacitated  
2 individual owning an ownership interest in a wholesaler, the term  
3 means the person appointed by a court as the conservator of such  
4 individual's property. The term also includes the appointed and  
5 qualified personal representative and the testamentary trustee of  
6 a deceased individual owning an ownership interest in a  
7 wholesaler.

8 (d) "Good faith" means honesty in fact and the observance of  
9 reasonable commercial standards of fair dealing in the trade, as  
10 defined and interpreted under section 2103 of the uniform commer-  
11 cial code, Act No. 174 of the Public Acts of 1962, being section  
12 440.2103 of the Michigan Compiled Laws.

13 (e) "Master distributor" means a wholesaler who acts in the  
14 same or similar capacity as a brewer or outstate seller of beer  
15 for a brand or brands of beer to other wholesalers on a regular  
16 basis in the normal course of business.

17 (f) "Reasonable qualifications" means the average standard  
18 of the criteria used by the respective supplier for wholesalers  
19 that entered into or renewed an agreement with the supplier  
20 during a period of 24 months prior to the proposed transfer of  
21 the wholesaler's business.

22 (g) "Retaliatory action" MEANS ACTION WHICH includes, but is  
23 not limited to, the refusal to continue an agreement, or a mate-  
24 rial reduction in the quality of service or quantity of products  
25 available to a wholesaler under an agreement, which refusal or  
26 reduction is not made in good faith.

1 (h) "Sales territory" means an area of exclusive sales  
2 responsibility for the brand or brands of beer sold by a supplier  
3 as designated by an agreement.

4 (I) "SUCCESSOR" MEANS A SUPPLIER WHO OBTAINS, IN ANY MANNER  
5 FROM ANY PERSON, INCLUDING A PERSON WHO IS NOT A SUPPLIER, THE  
6 DISTRIBUTION RIGHTS OF 1 OR MORE BRANDS OF BEER WHICH A LICENSED  
7 MICHIGAN WHOLESALER HAS DISTRIBUTED IN THIS STATE PURSUANT TO AN  
8 AGREEMENT WITH ANOTHER SUPPLIER WHO PREVIOUSLY HAD THE DISTRIBUTION  
9 RIGHTS FOR THE BRAND OR BRANDS.

10 (J) ~~(i)~~ "Supplier" means a brewer, an outstate seller of  
11 beer, or a master distributor.

12 (K) ~~(j)~~ "Transfer of a wholesaler's business" means the  
13 voluntary sale, assignment, or other transfer of the business or  
14 control of the business of the wholesaler, including the sale or  
15 other transfer of stock or assets by merger, consolidation, or  
16 dissolution.

17 (3) A supplier shall not do any of the following:

18 (a) Coerce, or attempt to coerce, any wholesaler to accept  
19 delivery of any beer or other commodity which has not been  
20 ordered by the wholesaler. However, a supplier may impose reasonable  
21 inventory requirements upon a wholesaler if the requirements are made in good faith and are generally applied to other  
22 wholesalers having an agreement with the supplier.

24 (b) Coerce, or attempt to coerce, any wholesaler to accept  
25 delivery of any beer or other commodity ordered by a wholesaler  
26 if the order was properly canceled by the wholesaler in

1 accordance with the procedures agreed upon by the supplier and  
2 wholesaler.

3 (c) Coerce, or attempt to coerce, any wholesaler to do any  
4 illegal act by threatening to amend, cancel, terminate, or refuse  
5 to renew any agreement existing between the supplier and  
6 wholesaler.

7 (d) Require a wholesaler to assent to any condition, stipu-  
8 lation, or provision limiting the wholesaler's right to sell the  
9 brand or brands of beer of any other supplier anywhere in this  
10 state unless the acquisition of the brand or brands of another  
11 supplier would materially impair the quality of service of the  
12 brand or brands of the supplier presently being sold by the  
13 wholesaler.

14 (e) Require a wholesaler to purchase 1 or more brands of  
15 beer in order for the wholesaler to purchase another brand or  
16 brands of beer for any reason. However, a wholesaler that has  
17 agreed to distribute a brand or brands before ~~the effective date~~  
18 ~~of this section~~ JUNE 26, 1984 shall continue to distribute the  
19 brand or brands in conformance with this section.

20 (f) Request a wholesaler to submit profit and loss state-  
21 ments, balance sheets, or financial records as a requirement for  
22 renewing or retaining an agreement.

23 (g) Withhold delivery of beer ordered by a wholesaler, or  
24 change a wholesaler's quota of a brand or brands if the withhold-  
25 ing or change is not made in good faith.

1 (h) Require a wholesaler by any means to participate in or  
2 contribute to any local or national advertising fund controlled  
3 directly or indirectly by a supplier.

4 (i) Fail to provide each wholesaler of the supplier's brand  
5 or brands with a written agreement which contains, in total, the  
6 supplier's agreement with each wholesaler ~~—~~ and WHICH desig-  
7 nates a specific sales territory. Any agreement which is in  
8 existence on ~~the effective date of this section~~ JUNE 26, 1984  
9 shall be renewed consistent with this section, ~~—; provided,—~~  
10 EXCEPT that this section may be incorporated by reference in the  
11 agreement.

12 (j) Fix, maintain, or establish the price at which a whole-  
13 saler shall sell any beer.

14 (k) Take any retaliatory action against a wholesaler that  
15 files a complaint regarding an alleged violation by the supplier  
16 of state or federal law or an administrative rule.

17 (l) Require or prohibit any change in the manager or succes-  
18 sor manager of any wholesaler who has been approved by the sup-  
19 plier as of ~~the effective date of this section~~ JUNE 26, 1984.  
20 Should a wholesaler change an approved manager or successor man-  
21 ager, a supplier shall not require or prohibit the change unless  
22 the person fails to meet the reasonable written standards for  
23 Michigan wholesalers of the supplier which standards have been  
24 provided to the wholesaler.

25 (M) REQUIRE BY A PROVISION OF ANY AGREEMENT OR OTHER INSTRU-  
26 MENT IN CONNECTION WITH THE AGREEMENT THAT ANY DISPUTE ARISING  
27 OUT OF OR IN CONNECTION WITH THAT AGREEMENT BE DETERMINED THROUGH

1 THE APPLICATION OF ANY OTHER STATE'S LAWS, BE DETERMINED IN  
2 FEDERAL COURT SITTING IN A STATE OTHER THAN MICHIGAN, OR BE  
3 DETERMINED IN A STATE COURT OF A STATE OTHER THAN THE STATE OF  
4 MICHIGAN. A PROVISION CONTAINED IN ANY AGREEMENT OR OTHER  
5 INSTRUMENT IN CONNECTION WITH THE AGREEMENT WHICH CONTRAVENES  
6 THIS SUBDIVISION SHALL BE NULL AND VOID.

7 (4) A wholesaler shall not sell or deliver beer to a retail  
8 licensee located outside the sales territory designated by the  
9 supplier of a particular brand or brands of beer. However,  
10 during periods of temporary service interruptions impacting a  
11 particular sales territory, a wholesaler who normally services  
12 the impacted sales territory shall file with the commission a  
13 written notice designating the specific wholesaler or wholesalers  
14 who will service the sales territory during the period of tempo-  
15 rary service interruption and the approximate length of time of  
16 the service interruption. When the temporary service interrup-  
17 tion is over, the wholesaler who normally services the sales ter-  
18 ritory shall notify in writing the commission and the wholesaler,  
19 or wholesalers, which is servicing the sales territory on a tem-  
20 porary basis of this fact and any wholesaler servicing the sales  
21 territory on a temporary basis shall cease servicing the sales  
22 territory upon receipt of the notice.

23 A wholesaler who is designated to service the impacted sales  
24 territory during the period of temporary service shall not be in  
25 violation of this subsection.

26 A wholesaler who has been designated to service the impacted  
27 sales territory during the period of temporary service

1 interruption shall not have any of the rights provided under  
2 subsections (6) to (12).

3 (5) A supplier or wholesaler shall not restrict or inhibit,  
4 directly or indirectly, the right of free association among sup-  
5 pliers or wholesalers for any lawful purpose.

6 (6) Notwithstanding the terms, provisions, or conditions of  
7 any agreement, a supplier shall not amend any agreement unless  
8 the supplier is acting in good faith in making the amendment.

9 (7) Notwithstanding any agreement and except as otherwise  
10 provided for in this section, a supplier shall not cause a whole-  
11 saler to resign from an agreement; or cancel, terminate, fail to  
12 renew, or refuse to continue under an agreement unless the sup-  
13 plier has complied with all of the following:

14 (a) Has satisfied the applicable notice requirements of  
15 subsection (10).

16 (b) Has acted in good faith.

17 (c) Has good cause for the cancellation, termination, nonre-  
18 newal, discontinuance, or forced resignation.

19 (8) Notwithstanding any agreement, good cause shall exist  
20 for the purposes of a termination, cancellation, nonrenewal; or  
21 discontinuance under subsection (7)(c) when all of the following  
22 occur:

23 (a) There is a failure by the wholesaler to comply with a  
24 provision of the agreement which is both reasonable and of mate-  
25 rial significance to the business relationship between the whole-  
26 saler and the supplier.



1 (b) The supplier first acquired knowledge of the failure  
2 described in subdivision (a) not more than 2 years before the  
3 date notification was given pursuant to subsection (7).

4 (c) The wholesaler was given written notice by the supplier  
5 of failure to comply with the agreement.

6 (d) The wholesaler was afforded a reasonable opportunity to  
7 assert good faith efforts to comply with the agreement within the  
8 time limits as provided for in subdivision (e).

9 (e) The wholesaler has been afforded 30 days in which to  
10 submit a plan of corrective action to comply with the agreement  
11 and an additional 90 days to cure such noncompliance in accord-  
12 ance with the plan.

13 (9) For each termination, cancellation, nonrenewal, or dis-  
14 continuance, the supplier shall have the burden of showing that  
15 it has acted in good faith, that the notice requirements under  
16 this section have been complied with, and that there was good  
17 cause for the termination, cancellation, nonrenewal, or  
18 discontinuance.

19 (10) Notwithstanding any agreement and except as otherwise  
20 provided in this section, the supplier shall furnish written  
21 notice of the termination, cancellation, nonrenewal, or discon-  
22 tinuance of an agreement to the wholesaler not less than 15 days  
23 before the effective date of the termination, cancellation, non-  
24 renewal, or discontinuance. The notice shall be by certified  
25 mail and shall contain all of the following:

26 (a) A statement of intention to terminate, cancel, not  
27 renew, or discontinue the agreement.

1 (b) A statement of the reason for the termination,  
2 cancellation, nonrenewal, or discontinuance.

3 (c) The date on which the termination, cancellation, nonre-  
4 newal, or discontinuance takes effect.

5 (11) Notwithstanding subsections (7) and (10), a supplier  
6 may terminate, cancel, fail to renew, or discontinue an agreement  
7 upon written notice given in the manner and containing the infor-  
8 mation required by subsection (10) if any of the following  
9 occur:

10 (a) Insolvency of the wholesaler, the filing of any petition  
11 by or against the wholesaler under any bankruptcy or receivership  
12 law, or the dissolution or liquidation of the wholesaler which  
13 materially affects the wholesaler's ability to remain in  
14 business.

15 (b) Revocation of the wholesaler's license by the commission  
16 whereby the wholesaler cannot service the wholesaler's sales ter-  
17 ritory for more than 60 days.

18 (c) The wholesaler, or an individual who owns more than 10%  
19 of the stock of a corporate wholesaler, has been convicted of a  
20 felony. As used in this subdivision, "felony" means a felony  
21 under the United States code or the Michigan Compiled Laws.  
22 However, an existing approved stockholder or stockholders shall  
23 have the right to purchase the stock of the offending stockholder  
24 prior to the conviction of the offending stockholder and, if the  
25 sale is completed prior to conviction, the provisions of this  
26 subdivision shall not apply.

1       (12) Notwithstanding subsections (7), (10), and (11), upon  
2 not less than 15 days' prior written notice given in the manner  
3 and containing the information required by subsection (10), a  
4 supplier may terminate, cancel, fail to renew, or discontinue an  
5 agreement if any of the following events occur:

6       (a) There was fraudulent conduct on the part of the whole-  
7 saler in dealings with the supplier.

8       (b) The wholesaler failed to confine its sales of a brand or  
9 brands to the assigned sales territory. This subdivision does  
10 not apply if there is a dispute between 2 or more wholesalers as  
11 to the boundaries of the assigned territory, and the boundaries  
12 cannot be determined by a reading of the description contained in  
13 the agreements between the supplier and the wholesalers.

14       (c) The sale by the wholesaler of any brand or brands sold  
15 by the supplier to the wholesaler and known by the wholesaler to  
16 be ineligible for sale prior to the actual sale to the retailer.  
17 The supplier shall repurchase the ineligible product from the  
18 wholesaler when the ineligibility is caused by the supplier. The  
19 supplier must give the wholesaler written notice specifying the  
20 ineligible product. This subdivision does not apply when a sup-  
21 plier ships a brand or brands to a wholesaler that must be  
22 removed within 60 days of the deadline for retail sale of the  
23 product. This 60-day period shall commence upon receipt of the  
24 product by the wholesaler.

25       (13) Notwithstanding subsections (7), (10), (11), and (12),  
26 a supplier may terminate, cancel, not renew, or discontinue an  
27 agreement upon not less than 30 days' prior written notice if the

1 supplier discontinues production or discontinues distribution in  
2 this state of all the brands sold by the supplier to the  
3 wholesaler. Nothing in this section shall prohibit a supplier  
4 upon not less than 30 days' notice to discontinue the distribu-  
5 tion of any particular brand or package of beer. This subsection  
6 does not prohibit a supplier from conducting test marketing of a  
7 new brand of beer or from conducting the test marketing of a  
8 brand of beer which is not currently being sold in this state  
9 provided that the supplier has notified the commission in writing  
10 of its plans to test market. The notice shall describe the  
11 market area in which the test shall be conducted; the name or  
12 names of the wholesaler or wholesalers who will be selling the  
13 beer; the name or names of the brand of beer being tested; and  
14 the period of time during which the testing will take place. A  
15 market testing period shall not exceed 18 months.

16 (14) The wholesaler shall devote reasonable efforts and  
17 resources to sales and distribution of all the supplier's prod-  
18 ucts which the wholesaler has been granted the right to sell and  
19 distribute and shall maintain reasonable sales levels.

20 (15) A brewer, an outstate seller of beer, or a master dis-  
21 tributor that has designated a sales territory for a wholesaler  
22 shall not enter into an additional agreement with any other  
23 wholesaler for the same brand or brands of beer in the same ter-  
24 ritory or any portion ~~thereof~~ OF THAT TERRITORY.

25 (16) A supplier shall not withhold consent to any transfer  
26 of a wholesaler's business if the proposed transferee meets the  
27 material and reasonable qualifications and standards required by

1 the supplier. A wholesaler shall give the supplier written  
2 notice of intent to transfer the wholesaler's business. A sup-  
3 plier shall not unreasonably delay a response to a request for a  
4 proposed transfer of a wholesaler's business. However, a trans-  
5 fer of a wholesaler's business which is not approved by the sup-  
6 plier shall be null and void. A supplier shall not interfere  
7 with, or prevent, the transfer of the wholesaler's business if  
8 the proposed transferee is a designated member.

9 (17) A supplier that has amended, canceled, terminated, or  
10 refused to renew any agreement; ~~or~~ HAS caused a wholesaler to  
11 resign from an agreement; or has withheld consent to any assign-  
12 ment or transfer of a wholesaler's business, except as provided  
13 for in this section, shall pay the wholesaler reasonable compen-  
14 sation for the diminished value of the wholesaler's business or  
15 of any ancillary business which has been negatively affected by  
16 the act of the supplier, or both. The value of the wholesaler's  
17 business or ancillary business shall include, but not be limited  
18 to, its good will.

19 (18) Either party may, at any time, determine that mutual  
20 agreement on the amount of reasonable compensation cannot be  
21 reached. Should such a determination be made, the supplier or  
22 the wholesaler shall send written notice to the other party  
23 declaring their intention to proceed with arbitration.  
24 Arbitration shall proceed only by mutual agreement of both  
25 parties.

26 (19) The matter of determining the amount of compensation  
27 under arbitration may, by agreement of the parties, be submitted

1 to a 5-member arbitration panel consisting of 2 representatives  
2 selected by the supplier but unassociated with the affected sup-  
3 plier, 2 wholesaler representatives selected by the wholesaler  
4 but unassociated with the wholesaler, and an impartial  
5 arbitrator.

6 (20) Not more than 10 days after the notice to enter into  
7 arbitration has been sent, each party shall request, in writing,  
8 a list of 5 arbitrators from the American arbitration  
9 association. Not more than 10 days after the receipt of the list  
10 of 5 choices, the wholesaler arbitrators and the supplier arbi-  
11 trators may strike and disqualify up to 2 names each from the  
12 list. Should either party fail to respond within the 10 days or  
13 should more than 1 name remain, the American arbitration associa-  
14 tion shall make the selection of the impartial arbitrator.

15 (21) Not more than 30 days after the list of arbitrators is  
16 received, the wholesaler and supplier shall exchange in writing  
17 the names of their respective arbitration panel representatives.

18 (22) Not more than 30 days after the final selection of the  
19 arbitration panel is made, the arbitration panel shall convene to  
20 decide the dispute. The panel shall render a decision by major-  
21 ity vote of the participants within 20 days from the conclusion  
22 of the arbitration.

23 (23) The cost of the impartial arbitrator, the stenographer,  
24 and the meeting site shall be equally divided between the whole-  
25 saler and the supplier. All other costs shall be paid by the  
26 party incurring them. The award of the arbitration panel shall  
27 be final and binding on the parties.

1       (24) After both parties have agreed to arbitrate should  
2 either party fail to abide by the time limitations as prescribed  
3 in subsections (20), (21), and (22), or fail or refuse to make  
4 the selection of any arbitrators, or fail to participate in the  
5 arbitration hearings, the other party shall make the selection of  
6 their arbitrators and proceed to arbitration. The party who has  
7 failed or refused to comply as prescribed in this subsection  
8 shall be considered to be in default. Any party considered to be  
9 in default pursuant to this subsection shall have waived any and  
10 all rights the party would have had in the arbitration and shall  
11 be considered to have consented to the determination of the arbi-  
12 tration panel.

13       (25) A wholesaler shall not waive any of the rights granted  
14 in any provision of this section. Nothing in this section shall  
15 be construed to limit or prohibit good faith dispute settlements  
16 voluntarily entered into by the parties.

17       (26) A successor to a supplier that continues in business as  
18 a brewer, an outstate seller of beer, or a master distributor  
19 shall be bound by all terms and conditions of each agreement of  
20 the supplier WITH A WHOLESALER LICENSED IN THIS STATE THAT WERE  
21 in effect on the date ~~of purchase~~ ON WHICH THE SUCCESSOR  
22 RECEIVED THE DISTRIBUTION RIGHTS OF THE PREVIOUS SUPPLIER.

23       (27) This section shall apply to agreements in existence on  
24 ~~the effective date of this section~~ JUNE 26, 1984, as well as  
25 agreements entered into or renewed after ~~the effective date of~~  
26 ~~this section~~ THAT DATE.

1       (28) If a supplier engages in conduct prohibited under this  
2 section, a wholesaler with which the supplier has an agreement  
3 may maintain a civil action against the supplier to recover  
4 actual damages reasonably incurred as the result of the prohib-  
5 ited conduct. If a wholesaler engages in conduct prohibited  
6 under this section, a supplier with which the wholesaler has an  
7 agreement may maintain a civil action against the wholesaler to  
8 recover actual damages reasonably incurred as the result of the  
9 prohibited conduct.

10       (29) A supplier that violates any provision of this section  
11 is liable for all actual damages and all court costs and reason-  
12 able attorney fees incurred by a wholesaler as a result of that  
13 violation. A wholesaler that violates any provision of this sec-  
14 tion is liable for all actual damages and all court costs and  
15 reasonable attorney fees incurred by the supplier as a result of  
16 that violation.

17       (30) A supplier or wholesaler may bring an action for  
18 declaratory judgment for determination of any controversy arising  
19 pursuant to this section.

20       (31) Except as otherwise provided in this section, if a  
21 court finds that a supplier has not acted in good faith in  
22 effecting an amendment, termination, cancellation, or nonrenewal  
23 of any agreement; or has unreasonably withheld its consent to any  
24 assignment, transfer, or sale of a wholesaler's business, it may  
25 award exemplary damages, as well as actual damages, court costs,  
26 and reasonable attorney fees to the wholesaler who has been  
27 damaged by the action of the supplier.



1       (32) Upon proper application to the court, a supplier or  
2 wholesaler may obtain injunctive relief against any violation of  
3 this section. If the court grants injunctive relief or issues a  
4 temporary restraining order, bond shall not be required to be  
5 posted.

6       (33) The procedure for resolving any violation of subsection  
7 (3)(a), (b), (c), (e), (f), (h), (i), (j), (k), (l), or (4) shall  
8 be the procedure prescribed by this act and the administrative  
9 procedures act of 1969, Act No. 306 of the Public Acts of 1969,  
10 being sections 24.201 to ~~24.315~~ 24.328 of the Michigan Compiled  
11 Laws. Any other violation of or dispute regarding this section,  
12 unless the dispute is resolved pursuant to subsections (18) to  
13 (24), shall only be resolved by a civil action in court as pro-  
14 vided in this section and not by the commission.

15       Sec. 30c. (1) The purpose of this section is to provide a  
16 structure for the business relations between a wholesaler OF WINE  
17 and a supplier OF WINE. Regulation in this area is considered  
18 necessary for the following reasons:

19       (a) To maintain stability and healthy competition in the  
20 wine industry in this state.

21       (b) To promote and maintain a sound, stable, and viable  
22 3-tier distribution system of wine to the public.

23       (c) To recognize the marketing distinctions between beer and  
24 wine.

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

26       (2) As used in this section, unless the context requires  
27 otherwise:

1       (a) "Agreement" means any agreement between a wholesaler and  
2 a supplier, whether oral or written, whereby a wholesaler is  
3 granted the right to offer and sell a brand or brands of wine  
4 sold by a supplier.

5       (b) "Ancillary business" means a business owned by a whole-  
6 saler, a stockholder of a wholesaler, or a partner of a whole-  
7 saler the primary purpose of which is directly related to the  
8 transporting, storing, or marketing of the brand or brands of  
9 wine of a supplier with whom the wholesaler has an agreement; or  
10 a business owned by a wholesaler, a stockholder of a wholesaler,  
11 or a partner of a wholesaler which recycles empty returnable bev-  
12 erage containers.

13       (c) "Designated member" means the spouse, child, grandchild,  
14 parent, brother, or sister of a deceased individual who owned an  
15 interest in a wholesaler, who is entitled to inherit the deceased  
16 individual's ownership interest in the wholesaler under the terms  
17 of the deceased individual's will, or who has otherwise been des-  
18 igned in writing by the deceased individual to succeed the  
19 deceased individual in the wholesaler's business, or is entitled  
20 to inherit such ownership interest under the laws of intestate  
21 succession of this state. With respect to an incapacitated indi-  
22 vidual owning an ownership interest in a wholesaler, the term  
23 means the person appointed by a court as the conservator of such  
24 individual's property. The term also includes the appointed and  
25 qualified personal representative and the testamentary trustee of  
26 a deceased individual owning an ownership interest in a  
27 wholesaler.

1 (d) "Good faith" means honesty in fact and the observance of  
2 reasonable commercial standards of fair dealing in the trade, as  
3 defined and interpreted under section 2103 of the uniform commer-  
4 cial code, Act No. 174 of the Public Acts of 1962, being section  
5 440.2103 of the Michigan Compiled Laws.

6 (e) "Master distributor" means a wholesaler who acts in the  
7 same or similar capacity as a wine maker or an outstate seller of  
8 wine for a brand or brands of wine to other wholesalers on a reg-  
9 ular basis in the normal course of business.

10 (f) "Reasonable qualifications" means the average standard  
11 of the criteria used by the respective supplier for wholesalers  
12 that entered into or renewed an agreement with the suppliers  
13 during a period of 24 months prior to the proposed transfer of  
14 the wholesaler's business.

15 (g) "Retaliatory action" MEANS ACTION WHICH includes, but is  
16 not limited to, the refusal to continue an agreement, or a mate-  
17 rial reduction in the quality of service or quantity of products  
18 available to a wholesaler under an agreement, which refusal or  
19 reduction is not made in good faith.

20 (h) "Sales territory" means an area of sales responsibility  
21 for the brand or brands of wine sold by a supplier as designated  
22 by an agreement.

23 (I) "SUCCESSOR" MEANS A SUPPLIER WHO OBTAINS, IN ANY MANNER  
24 FROM ANY PERSON, INCLUDING A PERSON WHO IS NOT A SUPPLIER, THE  
25 DISTRIBUTION RIGHTS OF 1 OR MORE BRANDS OF WINE WHICH A LICENSED  
26 MICHIGAN WHOLESALER HAS DISTRIBUTED IN THIS STATE PURSUANT TO AN

1 AGREEMENT WITH ANOTHER SUPPLIER, WHO PREVIOUSLY HAD THE  
2 DISTRIBUTION RIGHTS FOR THE BRAND OR BRANDS.

3 (J) ~~-(i)-~~ "Supplier" means a wine maker or an outstate  
4 seller of wine, or a master distributor.

5 (K) ~~-(j)-~~ "Transfer of a wholesaler's business" means the  
6 voluntary sale, assignment, or other transfer of the business or  
7 control of the business of the wholesaler, including the sale or  
8 other transfer of stock or assets by merger, consolidation, or  
9 dissolution.

10 (3) A supplier shall not do any of the following:

11 (a) Coerce, or attempt to coerce, any wholesaler to accept  
12 delivery of any wine or other commodity which has not been  
13 ordered by the wholesaler. However, a supplier may impose rea-  
14 sonable inventory requirements upon a wholesaler if the require-  
15 ments are made in good faith and are generally applied to other  
16 wholesalers having an agreement with the supplier.

17 (b) Coerce, or attempt to coerce, any wholesaler to accept  
18 delivery of any wine or other commodity ordered by a wholesaler  
19 if the order was properly canceled by the wholesaler in accord-  
20 ance with the procedures agreed upon by the supplier and  
21 wholesaler.

22 (c) Coerce, or attempt to coerce, any wholesaler to do any  
23 illegal act by threatening to amend, cancel, terminate, or refuse  
24 to renew any agreement existing between the supplier and  
25 wholesaler.

26 (d) Require a wholesaler to assent to any condition,  
27 stipulation, or provision limiting the wholesaler's right to sell

1 the brand or brands of wine of any other supplier anywhere in  
2 this state unless the acquisition of the brand or brands of  
3 another supplier would materially impair the quality of service  
4 of the brand or brands of the supplier presently being sold by  
5 the wholesaler.

6 (e) Require a wholesaler to purchase 1 or more brands of  
7 wine in order for the wholesaler to purchase another brand or  
8 brands of wine for any reason. However, a wholesaler that has  
9 agreed to distribute a brand or brands before ~~the effective date~~  
10 ~~of this section~~ JUNE 26, 1984 shall continue to distribute the  
11 brand or brands in conformance with this section.

12 (f) Request a wholesaler to submit profit and loss state-  
13 ments, balance sheets, or financial records as a requirement for  
14 renewing or retaining an agreement.

15 (g) Withhold delivery of wine ordered by a wholesaler, or  
16 change a wholesaler's quota of a brand or brands if the withhold-  
17 ing or change is not made in good faith.

18 (h) Require a wholesaler by any means to participate in or  
19 contribute to any local or national advertising fund controlled  
20 directly or indirectly by a supplier.

21 (i) Fail to provide each wholesaler of the supplier's brand  
22 or brands with a written agreement which contains in total the  
23 supplier's agreement with each wholesaler, and designates a spe-  
24 cific sales territory.

25 (j) Fix, maintain, or establish the price at which a whole-  
26 saler shall sell any wine.

1 (k) Take any retaliatory action against a wholesaler that  
2 files a complaint regarding an alleged violation by the supplier  
3 of state or federal law or an administrative rule.

4 (l) Require or prohibit any change in the manager or succes-  
5 sor manager of any wholesaler who has been approved by the sup-  
6 plier as of ~~the effective date of this section~~ JUNE 26, 1984.  
7 Should, after ~~the effective date of this section~~ JUNE 26, 1984,  
8 a supplier require that a manager or successor manager be  
9 appointed, or should a wholesaler change an approved manager or  
10 successor manager, a supplier shall not interfere with or pro-  
11 hibit the appointment unless the person fails to meet the reason-  
12 able written standards for Michigan wholesalers of the supplier  
13 which standards have been provided to the wholesaler.

14 (M) REQUIRE BY A PROVISION OF ANY AGREEMENT OR OTHER INSTRU-  
15 MENT IN CONNECTION WITH THE AGREEMENT THAT ANY DISPUTE ARISING  
16 OUT OF OR IN CONNECTION WITH THAT AGREEMENT BE DETERMINED THROUGH  
17 THE APPLICATION OF ANY OTHER STATE'S LAWS, BE DETERMINED IN FED-  
18 ERAL COURT SITTING IN A STATE OTHER THAN MICHIGAN, OR BE DETER-  
19 MINED IN A STATE COURT OF A STATE OTHER THAN THE STATE OF  
20 MICHIGAN. A PROVISION CONTAINED IN ANY AGREEMENT OR OTHER  
21 INSTRUMENT IN CONNECTION WITH THE AGREEMENT WHICH CONTRAVENES  
22 THIS SUBDIVISION SHALL BE NULL AND VOID.

23 (4) A wholesaler shall not sell or deliver wine to a retail  
24 licensee located outside the sales territory designated by the  
25 supplier of a particular brand or brands of wine. However,  
26 during periods of temporary service interruptions impacting a  
27 particular sales territory, a wholesaler who normally services

1 the impacted sales territory shall file with the commission a  
2 written notice designating the specific wholesaler or wholesalers  
3 who will service the sales territory during the period of tempo-  
4 rary service interruption and the approximate length of time of  
5 the service interruption. When the temporary service interrup-  
6 tion is over, the wholesaler who normally services the sales ter-  
7 ritory shall notify in writing the commission and the wholesaler,  
8 or wholesalers, which is servicing the sales territory on a tem-  
9 porary basis of this fact and any wholesaler servicing the sales  
10 territory on a temporary basis shall cease servicing the sales  
11 territory upon receipt of the notice.

12 A wholesaler who is designated to service the impacted sales  
13 territory during the period of temporary service shall not be in  
14 violation of this subsection.

15 A wholesaler who has been designated to service the impacted  
16 sales territory during the period of temporary service interrup-  
17 tion shall not have any of the rights provided under subsections  
18 (6) to (12).

19 (5) A supplier or wholesaler shall not restrict or inhibit,  
20 directly or indirectly, the right of free association among sup-  
21 pliers or wholesalers for any lawful purpose.

22 (6) Notwithstanding the terms, provisions, or conditions of  
23 any agreement, a supplier shall not amend any agreement unless  
24 the supplier is acting in good faith in making the amendment.

25 (7) Notwithstanding any agreement and except as otherwise  
26 provided for in this section, a supplier shall not cause a  
27 wholesaler to resign from an agreement; or cancel, terminate,

1 fail to renew, or refuse to continue under an agreement unless  
2 the supplier has complied with all of the following:

3 (a) Has satisfied the applicable notice requirements of  
4 subsection (10).

5 (b) Has acted in good faith.

6 (c) Has good cause for the cancellation, termination, nonre-  
7 newal, discontinuance, or forced resignation:

8 (8) Notwithstanding any agreement, good cause shall exist  
9 for the purposes of a termination, cancellation, nonrenewal, or  
10 discontinuance under subsection (7)(c) when all of the following  
11 occur:

12 (a) There is a failure by the wholesaler to comply with a  
13 provision of the agreement which is both reasonable and of mate-  
14 rial significance to the business relationship between the whole-  
15 saler and the supplier.

16 (b) The supplier first acquired knowledge of the failure  
17 described in subdivision (a) not more than 2 years before the  
18 date notification was given pursuant to subsection (7).

19 (c) The wholesaler was given written notice by the supplier  
20 of failure to comply with the agreement.

21 (d) The wholesaler was afforded a reasonable opportunity to  
22 assert good faith efforts to comply with the agreement within the  
23 time limits as provided for in subdivision (e).

24 (e) The wholesaler has been afforded 25 days in which to  
25 submit a plan of corrective action to comply with the agreement  
26 and an additional 75 days to cure such noncompliance in  
27 accordance with the plan.



1           (9) A supplier or wholesaler who terminates, cancels,  
2 nonrenews, or discontinues an agreement shall have the burden of  
3 showing that it has acted in good faith, complied with the appli-  
4 cable notice requirements under this section, and that there was  
5 good cause for the termination, cancellation, nonrenewal, or  
6 discontinuance.

7           (10) Notwithstanding any agreement and except as otherwise  
8 provided in this section, the supplier shall furnish written  
9 notice of the termination, cancellation, nonrenewal, or discon-  
10 tinuance of an agreement to the wholesaler not less than 15 days  
11 before the effective date of the termination, cancellation, non-  
12 renewal, or discontinuance. The notice shall be by certified  
13 mail and shall contain all of the following:

14       (a) A statement of intention to terminate, cancel, not  
15 renew, or discontinue the agreement.

16       (b) A statement of the reason for the termination, cancella-  
17 tion, nonrenewal, or discontinuance.

18       (c) The date on which the termination, cancellation, nonre-  
19 newal, or discontinuance takes effect.

20           (11) Notwithstanding subsections (7) and (10), a supplier  
21 may immediately terminate, cancel, fail to renew, or discontinue  
22 an agreement upon written notice given in the manner and contain-  
23 ing the information required by subsection (10) if any of the  
24 following occur:

25       (a) Insolvency of the wholesaler, the filing of any petition  
26 by or against the wholesaler under any bankruptcy or receivership  
27 law, or the dissolution or liquidation of the wholesaler which

1 materially affects the wholesaler's ability to remain in  
2 business.

3 (b) Revocation of the wholesaler's license by the commission  
4 whereby the wholesaler cannot service the wholesaler's sales ter-  
5 ritory for more than 60 days.

6 (c) The wholesaler, or an individual who owns more than 10%  
7 of the stock of a corporate wholesaler, has been convicted of a  
8 felony. As used in this subdivision, "felony" means a felony  
9 under the United States code or the Michigan Compiled Laws.  
10 However, an existing approved stockholder or stockholders shall  
11 have the right to purchase the stock of the offending stockholder  
12 prior to the conviction of the offending stockholder and if the  
13 sale is completed prior to conviction the provisions of this sub-  
14 division shall not apply.

15 (12) Notwithstanding subsections (7), (10), and (11), upon  
16 not less than 15 days' prior written notice given in the manner  
17 and containing the information required by subsection ~~(1)~~ (10),  
18 a supplier may terminate, cancel, fail to renew, or discontinue  
19 an agreement if any of the following events occur:

20 (a) There was fraudulent conduct on the part of the whole-  
21 saler in dealings with the supplier.

22 (b) The wholesaler failed to confine its sales of a brand or  
23 brands to the assigned sales territory. This subdivision does  
24 not apply if there is a dispute between 2 or more wholesalers as  
25 to the boundaries of the assigned territory, and the boundaries  
26 cannot be determined by a reading of the description contained in  
27 the agreements between the supplier and the wholesalers.

1       (c) The sale by the wholesaler of any brand or brands sold  
2 by the supplier to the wholesaler and known by the wholesaler to  
3 be ineligible for sale prior to the actual sale to the retailer.  
4 The supplier shall repurchase the ineligible product from the  
5 wholesaler when the ineligibility is caused by the supplier. The  
6 supplier must give the wholesaler written notice specifying the  
7 ineligible product.

8       (13) Notwithstanding subsections (7), (10), (11), and (12),  
9 a supplier may terminate, cancel, not renew, or discontinue an  
10 agreement upon not less than 30 days' prior written notice if the  
11 supplier discontinues production or discontinues distribution in  
12 this state of all the brands sold by the supplier to the  
13 wholesaler. Nothing in this section shall prohibit a supplier  
14 upon not less than 30 days' notice to discontinue the distribu-  
15 tion of any particular brand or package of wine. This subsection  
16 does not prohibit a supplier from conducting test marketing of a  
17 new brand of wine or from conducting the test marketing of a  
18 brand of wine which is not currently being sold in this state  
19 provided that the supplier has notified the commission in writing  
20 of its plans to test market. The notice shall describe the  
21 market area in which the test shall be conducted; the name or  
22 names of the wholesaler or wholesalers who will be selling the  
23 wine; the name or names of the brand of wine being tested; and  
24 the period of time during which the testing will take place. A  
25 market testing period shall not exceed 18 months.

26       (14) The wholesaler shall devote reasonable efforts and  
27 resources to sales and distribution of all the supplier's

1 products which the wholesaler has been granted the right to sell  
2 and distribute and shall maintain reasonable sales levels.

3 (15) A supplier shall not withhold consent to any transfer  
4 of a wholesaler's business if the proposed transferee meets the  
5 material and reasonable qualifications and standards required by  
6 the supplier. A wholesaler shall give the supplier written  
7 notice of intent to transfer the wholesaler's business. A sup-  
8 plier shall not unreasonably delay a response to a request for a  
9 proposed transfer of a wholesaler's business. However, a trans-  
10 fer of a wholesaler's business which is not approved by the sup-  
11 plier shall be null and void. A supplier shall not interfere  
12 with, or prevent, the transfer of the wholesaler's business if  
13 the proposed transferee is a designated member.

14 (16) A supplier as part of the written agreement required by  
15 this section may, subject to the provisions of subsection (3)(1),  
16 require a wholesaler to designate a successor manager who shall  
17 be subject to prior approval by the supplier. In the event the  
18 designated successor manager fails to assume the role of approved  
19 manager or for any reason does not continue to manage the  
20 wholesaler's business, after assuming that responsibility, then  
21 any successor shall be subject to the prior approval of the sup-  
22 plier, subject to the provisions of subsection (3)(1), notwith-  
23 standing the transferee's interest as a designated member.

24 (17) A supplier that has amended, canceled, terminated, or  
25 refused to renew any agreement; ~~or~~ HAS caused a wholesaler to  
26 resign from an agreement; or has withheld consent to any  
27 assignment or transfer of a wholesaler's business, except as

1 provided for in this section, shall pay the wholesaler reasonable  
2 compensation for the diminished value of the wholesaler's busi-  
3 ness or of any ancillary business which has been negatively  
4 affected by the act of the supplier, or both. The value of the  
5 wholesaler's business or ancillary business shall include, but  
6 not be limited to, its goodwill.

7 (18) Either party may, at any time, determine that mutual  
8 agreement on the amount of reasonable compensation cannot be  
9 reached. Should such a determination be made, the supplier or  
10 the wholesaler shall send written notice to the other party  
11 declaring their intention to proceed with arbitration.  
12 Arbitration shall proceed only by mutual agreement of both  
13 parties.

14 (19) The matter of determining the amount of compensation  
15 under arbitration may, by agreement of the parties, be submitted  
16 to a 5-member arbitration panel consisting of 2 representatives  
17 selected by the supplier but unassociated with the affected sup-  
18 plier, 2 wholesaler representatives selected by the wholesaler  
19 but unassociated with the wholesaler, and an impartial  
20 arbitrator.

21 (20) Not more than 10 days after the notice to enter into  
22 arbitration has been sent, each party shall request, in writing,  
23 a list of 5 arbitrators from the American arbitration  
24 association. Not more than 10 days after the receipt of the list  
25 of 5 choices, the wholesaler arbitrators and the supplier arbi-  
26 trators may strike and disqualify up to 2 names each from the  
27 list. Should either party fail to respond within the 10 days or

1 should more than 1 name remain, the American arbitration  
2 association shall make the selection of the impartial  
3 arbitrator.

4 (21) Not more than 30 days after the list of arbitrators is  
5 received, the wholesaler and supplier shall exchange in writing  
6 the names of their respective arbitration panel representatives.

7 (22) Not more than 30 days after the final selection of the  
8 arbitration panel is made, the arbitration panel shall convene to  
9 decide the dispute. The panel shall render a decision by major-  
10 ity vote of the participants within 20 days from the conclusion  
11 of the arbitration.

12 (23) The cost of the impartial arbitrator, the stenographer,  
13 and the meeting site shall be equally divided between the whole-  
14 saler and the supplier. All other costs shall be paid by the  
15 party incurring them. The award of the arbitration panel shall  
16 be final and binding on the parties.

17 (24) Should either party fail to abide by the time limita-  
18 tions as prescribed in subsections (20), (21), and (22), or fail  
19 or refuse to make the selection of any arbitrators, or fail to  
20 participate in the arbitration hearings, the other party shall  
21 make the selection of their arbitrators and proceed to  
22 arbitration. The party who has failed or refused to comply as  
23 prescribed in this subsection shall be considered to be in  
24 default. Any party considered to be in default pursuant to this  
25 subsection shall have waived any and all rights the party would  
26 have had in the arbitration and shall be considered to have  
27 consented to the determination of the arbitration panel.

1       (25) A wholesaler shall not waive any of the rights granted  
2 in any provision of this section. Nothing in this section shall  
3 be construed to limit or prohibit good faith dispute settlements  
4 voluntarily entered into by the parties.

5       (26) A successor to a supplier that continues in business as  
6 a wine maker, an outstate seller of wine, or master distributor  
7 shall be bound by all terms and conditions of each agreement of  
8 the supplier WITH A WHOLESALER LICENSED IN THIS STATE THAT WERE  
9 in effect on the date ~~of purchase~~ ON WHICH THE SUCCESSOR  
10 RECEIVED THE DISTRIBUTION RIGHTS OF THE PREVIOUS SUPPLIER.

11       (27) This section shall apply to agreements in existence on  
12 ~~the effective date of this section~~ JUNE 26, 1984, as well as  
13 agreements entered into or renewed after ~~the effective date of~~  
14 ~~this section~~ THAT DATE.

15       (28) If a supplier engages in conduct prohibited under this  
16 section, a wholesaler with which the supplier has an agreement  
17 may maintain a civil action against the supplier to recover  
18 actual damages reasonably incurred as the result of the prohib-  
19 ited conduct. If a wholesaler engages in conduct prohibited  
20 under this section, a supplier with which the wholesaler has an  
21 agreement may maintain a civil action against the wholesaler to  
22 recover actual damages reasonably incurred as the result of the  
23 prohibited conduct.

24       (29) A supplier that violates any provision of this section  
25 is liable for all actual damages and all court costs and reason-  
26 able attorney fees incurred by a wholesaler as a result of that  
27 violation. A wholesaler that violates any provision of this

1 section is liable for all actual damages and all court costs and  
2 reasonable attorney fees incurred by the supplier as a result of  
3 that violation.

4 (30) A supplier or wholesaler may bring an action for  
5 declaratory judgment for determination of any controversy arising  
6 pursuant to this section.

7 (31) Except as otherwise provided in this section, if a  
8 court finds that a supplier has not acted in good faith in  
9 effecting the amendment, termination, cancellation, or nonrenewal  
10 of any agreement; or has unreasonably withheld its consent to any  
11 assignment, transfer, or sale of a wholesaler's business, it may  
12 award exemplary damages, as well as actual damages, court costs,  
13 and reasonable attorney fees to the wholesaler who has been dam-  
14 aged by the action of the supplier.

15 (32) Upon proper application to the court, a supplier or  
16 wholesaler may obtain injunctive relief against any violation of  
17 this section. If the court grants injunctive relief or issues a  
18 temporary restraining order, bond shall not be required to be  
19 posted.

20 (33) The procedure for resolving any violation of subsection  
21 (3)(a), (b), (c), (e), (f), (h), (i), (j), (k), (l), or (4) shall  
22 be the procedure prescribed by this act and the administrative  
23 procedures act of 1969, Act No. 306 of the Public Acts of 1969,  
24 being sections 24.201 to ~~24.315~~ 24.328 of the Michigan Compiled  
25 Laws. Any other violation of or dispute regarding this section,  
26 unless the dispute is resolved pursuant to subsections (18) to



1 (24), shall only be resolved by a civil action in court as  
2 provided in this section and not by the commission.