

# HOUSE BILL No. 6020

September 15, 1998, Introduced by Rep. Profit and referred to the Committee on Regulatory Affairs.

A bill to amend 1998 PA 58, entitled  
"Michigan liquor control code of 1998,"  
(MCL 436.1101 to 436.2303) by adding section 309.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1        SEC. 309. (1) THE PURPOSE OF THIS SECTION IS TO PROVIDE A  
2 STRUCTURE FOR THE BUSINESS RELATIONS BETWEEN A WHOLESALER OF  
3 MIXED SPIRIT DRINK AND A SUPPLIER OF MIXED SPIRIT DRINK.  
4 REGULATION IN THIS AREA IS CONSIDERED NECESSARY FOR THE FOLLOWING  
5 REASONS:  
6        (A) TO MAINTAIN STABILITY AND HEALTHY COMPETITION IN THE  
7 MIXED SPIRIT DRINK INDUSTRY IN THIS STATE.  
8        (B) TO PROMOTE AND MAINTAIN A SOUND, STABLE, AND VIABLE  
9 3-TIER DISTRIBUTION SYSTEM OF MIXED SPIRIT DRINK TO THE PUBLIC.  
10       (C) TO RECOGNIZE THE MARKETING DISTINCTIONS BETWEEN BEER,  
11 WINE, AND MIXED SPIRIT DRINK.

(D) TO PROMOTE THE PUBLIC HEALTH, SAFETY, AND WELFARE.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT REQUIRES OTHERWISE:

(A) "AGREEMENT" MEANS ANY AGREEMENT BETWEEN A WHOLESALER AND A SUPPLIER, WHETHER ORAL OR WRITTEN, WHEREBY A WHOLESALER IS GRANTED THE RIGHT TO OFFER AND SELL A BRAND OR BRANDS OF MIXED SPIRIT DRINK SOLD BY A SUPPLIER.

(B) "ANCILLARY BUSINESS" MEANS A BUSINESS OWNED BY A WHOLE-SALER, A STOCKHOLDER OF A WHOLESALER, OR A PARTNER OF A WHOLE-SALER THE PRIMARY PURPOSE OF WHICH IS DIRECTLY RELATED TO THE TRANSPORTING, STORING, OR MARKETING OF THE BRAND OR BRANDS OF MIXED SPIRIT DRINK OF A SUPPLIER WITH WHOM THE WHOLESALER HAS AN AGREEMENT; OR A BUSINESS OWNED BY A WHOLESALER, A STOCKHOLDER OF A WHOLESALER, OR A PARTNER OF A WHOLESALER WHICH RECYCLES EMPTY RETURNABLE BEVERAGE CONTAINERS.

(C) "DESIGNATED MEMBER" MEANS THE SPOUSE, CHILD, GRANDCHILD, PARENT, BROTHER, OR SISTER OF A DECEASED INDIVIDUAL WHO OWNED AN INTEREST IN A WHOLESALER, WHO IS ENTITLED TO INHERIT THE DECEASED INDIVIDUAL'S OWNERSHIP INTEREST IN THE WHOLESALER UNDER THE TERMS OF THE DECEASED INDIVIDUAL'S WILL, OR WHO HAS OTHERWISE BEEN DESIGNATED IN WRITING BY THE DECEASED INDIVIDUAL TO SUCCEED THE DECEASED INDIVIDUAL IN THE WHOLESALER'S BUSINESS, OR IS ENTITLED TO INHERIT SUCH OWNERSHIP INTEREST UNDER THE LAWS OF INTESSTATE SUCCESSION OF THIS STATE. WITH RESPECT TO AN INCAPACITATED INDIVIDUAL OWNING AN OWNERSHIP INTEREST IN A WHOLESALER, THE TERM MEANS THE PERSON APPOINTED BY A COURT AS THE CONSERVATOR OF SUCH INDIVIDUAL'S PROPERTY. THE TERM ALSO INCLUDES THE APPOINTED AND

1 QUALIFIED PERSONAL REPRESENTATIVE AND THE TESTAMENTARY TRUSTEE OF  
2 A DECEASED INDIVIDUAL OWNING AN OWNERSHIP INTEREST IN A  
3 WHOLESALER.

4 (D) "GOOD FAITH" MEANS HONESTY IN FACT AND THE OBSERVANCE OF  
5 REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING IN THE TRADE, AS  
6 DEFINED AND INTERPRETED UNDER SECTION 2103 OF THE UNIFORM COMMER-  
7 CIAL CODE, 1962 PA 174, MCL 440.2103.

8 (E) "MASTER DISTRIBUTOR" MEANS A WHOLESALER WHO ACTS IN THE  
9 SAME OR SIMILAR CAPACITY AS A MIXED SPIRIT DRINK MANUFACTURER OR  
10 AN OUTSTATE SELLER OF MIXED SPIRIT DRINK FOR A BRAND OR BRANDS OF  
11 MIXED SPIRIT DRINK TO OTHER WHOLESALERS ON A REGULAR BASIS IN THE  
12 NORMAL COURSE OF BUSINESS.

13 (F) "REASONABLE QUALIFICATIONS" MEANS THE AVERAGE STANDARD  
14 OF THE CRITERIA USED BY THE RESPECTIVE SUPPLIER FOR WHOLESALERS  
15 THAT ENTERED INTO OR RENEWED AN AGREEMENT WITH THE SUPPLIERS  
16 DURING A PERIOD OF 24 MONTHS PRIOR TO THE PROPOSED TRANSFER OF  
17 THE WHOLESALER'S BUSINESS.

18 (G) "RETALIATORY ACTION" MEANS ACTION WHICH INCLUDES, BUT IS  
19 NOT LIMITED TO, THE REFUSAL TO CONTINUE AN AGREEMENT, OR A MATE-  
20 RIAL REDUCTION IN THE QUALITY OF SERVICE OR QUANTITY OF PRODUCTS  
21 AVAILABLE TO A WHOLESALER UNDER AN AGREEMENT, WHICH REFUSAL OR  
22 REDUCTION IS NOT MADE IN GOOD FAITH.

23 (H) "SALES TERRITORY" MEANS AN AREA OF SALES EXCLUSIVE  
24 RESPONSIBILITY FOR THE BRAND OR BRANDS OF MIXED SPIRIT DRINK SOLD  
25 BY A SUPPLIER AS DESIGNATED BY AN AGREEMENT.

26 (I) "SUCCESSOR" MEANS A SUPPLIER WHO OBTAINS, IN ANY MANNER  
27 FROM ANY PERSON, INCLUDING A PERSON WHO IS NOT A SUPPLIER, THE

1 DISTRIBUTION RIGHTS OF 1 OR MORE BRANDS OF MIXED SPIRIT DRINK  
2 WHICH A LICENSED MICHIGAN WHOLESALER HAS DISTRIBUTED IN THIS  
3 STATE PURSUANT TO AN AGREEMENT WITH ANOTHER SUPPLIER, WHO PREVI-  
4 OUSLY HAD THE DISTRIBUTION RIGHTS FOR THE BRAND OR BRANDS.

5 (J) "SUPPLIER" MEANS A MIXED SPIRIT DRINK MANUFACTURER OR  
6 AN OUTSTATE SELLER OF MIXED SPIRIT DRINK, OR A MASTER  
7 DISTRIBUTOR.

8 (K) "TRANSFER OF A WHOLESALER'S BUSINESS" MEANS THE VOLUN-  
9 TARY SALE, ASSIGNMENT, OR OTHER TRANSFER OF THE BUSINESS OR CON-  
10 TROL OF THE BUSINESS OF THE WHOLESALER, INCLUDING THE SALE OR  
11 OTHER TRANSFER OF STOCK OR ASSETS BY MERGER, CONSOLIDATION, OR  
12 DISSOLUTION.

13 (3) A SUPPLIER SHALL NOT DO ANY OF THE FOLLOWING:

14 (A) COERCE, OR ATTEMPT TO COERCE, ANY WHOLESALER TO ACCEPT  
15 DELIVERY OF ANY MIXED SPIRIT DRINK OR OTHER COMMODITY WHICH HAS  
16 NOT BEEN ORDERED BY THE WHOLESALER. HOWEVER, A SUPPLIER MAY  
17 IMPOSE REASONABLE INVENTORY REQUIREMENTS UPON A WHOLESALER IF THE  
18 REQUIREMENTS ARE MADE IN GOOD FAITH AND ARE GENERALLY APPLIED TO  
19 OTHER WHOLESALERS HAVING AN AGREEMENT WITH THE SUPPLIER.

20 (B) COERCE, OR ATTEMPT TO COERCE, ANY WHOLESALER TO ACCEPT  
21 DELIVERY OF ANY MIXED SPIRIT DRINK OR OTHER COMMODITY ORDERED BY  
22 A WHOLESALER IF THE ORDER WAS PROPERLY CANCELED BY THE WHOLESALER  
23 IN ACCORDANCE WITH THE PROCEDURES AGREED UPON BY THE SUPPLIER AND  
24 WHOLESALER.

25 (C) COERCE, OR ATTEMPT TO COERCE, ANY WHOLESALER TO DO ANY  
26 ILLEGAL ACT BY THREATENING TO AMEND, CANCEL, TERMINATE, OR REFUSE

1 TO RENEW ANY AGREEMENT EXISTING BETWEEN THE SUPPLIER AND  
2 WHOLESALER.

3 (D) REQUIRE A WHOLESALER TO ASSENT TO ANY CONDITION, STIPU-  
4 LATION, OR PROVISION LIMITING THE WHOLESALER'S RIGHT TO SELL THE  
5 BRAND OR BRANDS OF MIXED SPIRIT DRINK OF ANY OTHER SUPPLIER ANY-  
6 WHERE IN THIS STATE UNLESS THE ACQUISITION OF THE BRAND OR BRANDS  
7 OF ANOTHER SUPPLIER WOULD MATERIALLY IMPAIR THE QUALITY OF SERV-  
8 ICE OF THE BRAND OR BRANDS OF THE SUPPLIER PRESENTLY BEING SOLD  
9 BY THE WHOLESALER.

10 (E) REQUIRE A WHOLESALER TO PURCHASE 1 OR MORE BRANDS OF  
11 MIXED SPIRIT DRINK IN ORDER FOR THE WHOLESALER TO PURCHASE  
12 ANOTHER BRAND OR BRANDS OF MIXED SPIRIT DRINK FOR ANY REASON.  
13 HOWEVER, A WHOLESALER THAT HAS AGREED TO DISTRIBUTE A BRAND OR  
14 BRANDS BEFORE THE EFFECTIVE DATE OF THIS SECTION SHALL CONTINUE  
15 TO DISTRIBUTE THE BRAND OR BRANDS IN CONFORMANCE WITH THIS  
16 SECTION.

17 (F) REQUEST A WHOLESALER TO SUBMIT PROFIT AND LOSS STATE-  
18 MENTS, BALANCE SHEETS, OR FINANCIAL RECORDS AS A REQUIREMENT FOR  
19 RENEWING OR RETAINING AN AGREEMENT.

20 (G) WITHHOLD DELIVERY OF MIXED SPIRIT DRINK ORDERED BY A  
21 WHOLESALER, OR CHANGE A WHOLESALER'S QUOTA OF A BRAND OR BRANDS  
22 IF THE WITHHOLDING OR CHANGE IS NOT MADE IN GOOD FAITH.

23 (H) REQUIRE A WHOLESALER BY ANY MEANS TO PARTICIPATE IN OR  
24 CONTRIBUTE TO ANY LOCAL OR NATIONAL ADVERTISING FUND CONTROLLED  
25 DIRECTLY OR INDIRECTLY BY A SUPPLIER.

26 (I) FAIL TO PROVIDE EACH WHOLESALER OF THE SUPPLIER'S BRAND  
27 OR BRANDS WITH A WRITTEN AGREEMENT WHICH CONTAINS IN TOTAL THE

1 SUPPLIER'S AGREEMENT WITH EACH WHOLESALER AND DESIGNATES A  
2 SPECIFIC SALES TERRITORY.

3 (J) FIX, MAINTAIN, OR ESTABLISH THE PRICE AT WHICH A WHOLE-  
4 SALER SHALL SELL ANY MIXED SPIRIT DRINK.

5 (K) TAKE ANY RETALIATORY ACTION AGAINST A WHOLESALER THAT  
6 FILES A COMPLAINT REGARDING AN ALLEGED VIOLATION BY THE SUPPLIER  
7 OF STATE OR FEDERAL LAW OR AN ADMINISTRATIVE RULE.

8 (L) REQUIRE OR PROHIBIT ANY CHANGE IN THE MANAGER OR SUCCES-  
9 SOR MANAGER OF ANY WHOLESALER WHO HAS BEEN APPROVED BY THE SUP-  
10 PLIER AS OF THE EFFECTIVE DATE OF THIS SECTION. SHOULD, AFTER  
11 THE EFFECTIVE DATE OF THIS SECTION, A SUPPLIER REQUIRE THAT A  
12 MANAGER OR SUCCESSOR MANAGER BE APPOINTED, OR SHOULD A WHOLESALER  
13 CHANGE AN APPROVED MANAGER OR SUCCESSOR MANAGER, A SUPPLIER SHALL  
14 NOT INTERFERE WITH OR PROHIBIT THE APPOINTMENT UNLESS THE PERSON  
15 FAILS TO MEET THE REASONABLE WRITTEN STANDARDS FOR MICHIGAN  
16 WHOLESALERS OF THE SUPPLIER WHICH STANDARDS HAVE BEEN PROVIDED TO  
17 THE WHOLESALER.

18 (M) REQUIRE BY A PROVISION OF ANY AGREEMENT OR OTHER INSTRU-  
19 MENT IN CONNECTION WITH THE AGREEMENT THAT ANY DISPUTE ARISING  
20 OUT OF OR IN CONNECTION WITH THAT AGREEMENT BE DETERMINED THROUGH  
21 THE APPLICATION OF ANY OTHER STATE'S LAWS. ANY SUPPLIER OR  
22 WHOLESALER AGGRIEVED BY ANY DISPUTE ARISING OUT OF OR IN CONNEC-  
23 TION WITH AN AGREEMENT GOVERNED BY THIS ACT SHALL HAVE THE RIGHT  
24 TO FILE AN APPROPRIATE ACTION CONSISTENT WITH THIS ACT IN ANY  
25 COURT IN THIS STATE HAVING VENUE.

26 (4) A WHOLESALER SHALL NOT SELL OR DELIVER MIXED SPIRIT  
27 DRINK TO A RETAIL LICENSEE LOCATED OUTSIDE THE EXCLUSIVE SALES

1 TERRITORY DESIGNATED BY THE SUPPLIER OF A PARTICULAR BRAND OR  
2 BRANDS OF MIXED SPIRIT DRINK. HOWEVER, DURING PERIODS OF TEMPO-  
3 RARY SERVICE INTERRUPTIONS IMPACTING A PARTICULAR SALES TERRITO-  
4 RY, A WHOLESALER WHO NORMALLY SERVICES THE IMPACTED SALES TERRI-  
5 TORY SHALL FILE WITH THE COMMISSION A WRITTEN NOTICE DESIGNATING  
6 THE SPECIFIC WHOLESALER OR WHOLESALERS WHO WILL SERVICE THE SALES  
7 TERRITORY DURING THE PERIOD OF TEMPORARY SERVICE INTERRUPTION AND  
8 THE APPROXIMATE LENGTH OF TIME OF THE SERVICE INTERRUPTION. WHEN  
9 THE TEMPORARY SERVICE INTERRUPTION IS OVER, THE WHOLESALER WHO  
10 NORMALLY SERVICES THE SALES TERRITORY SHALL NOTIFY IN WRITING THE  
11 COMMISSION AND THE WHOLESALER, OR WHOLESALERS, THAT IS SERVICING  
12 THE SALES TERRITORY ON A TEMPORARY BASIS OF THIS FACT AND ANY  
13 WHOLESALER SERVICING THE SALES TERRITORY ON A TEMPORARY BASIS  
14 SHALL CEASE SERVICING THE SALES TERRITORY UPON RECEIPT OF THE  
15 NOTICE. A WHOLESALER WHO IS DESIGNATED TO SERVICE THE IMPACTED  
16 SALES TERRITORY DURING THE PERIOD OF TEMPORARY SERVICE SHALL NOT  
17 BE IN VIOLATION OF THIS SUBSECTION AND SHALL NOT HAVE ANY OF THE  
18 RIGHTS PROVIDED UNDER SUBSECTIONS (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  
14 SUBDIVISION 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 (10), A  
18 SUPPLIER MAY TERMINATE, CANCEL, FAIL TO RENEW, OR DISCONTINUE AN  
19 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. THIS SECTION SHALL NOT PROHIBIT A SUPPLIER, UPON NOT  
14 LESS THAN 30 DAYS' NOTICE, TO COMPLETELY DISCONTINUE THE DISTRI-  
15 BUTION OF ANY PARTICULAR BRAND OR PACKAGE OF MIXED SPIRIT DRINK.  
16 A SUPPLIER WHO DISCONTINUES THE DISTRIBUTION OF ALL OR ANY PAR-  
17 TICULAR BRAND OR PACKAGE OF MIXED SPIRIT DRINK UNDER THIS SUBSEC-  
18 TION AND THEN REINTRODUCES THAT BRAND OR PACKAGE WITHIN 365 DAYS  
19 OF THE DISCONTINUANCE SHALL ASSIGN THAT BRAND OR PACKAGE TO THE  
20 WHOLESALER WHO HAD BEEN ASSIGNED THE BRAND OR PACKAGE BEFORE THE  
21 DISCONTINUANCE. THIS SUBSECTION DOES NOT PROHIBIT A SUPPLIER  
22 FROM CONDUCTING TEST MARKETING OF A NEW BRAND OF MIXED SPIRIT  
23 DRINK OR FROM CONDUCTING THE TEST MARKETING OF A BRAND OF MIXED  
24 SPIRIT DRINK WHICH IS NOT CURRENTLY BEING SOLD IN THIS STATE PRO-  
25 VIDED THAT THE SUPPLIER HAS NOTIFIED THE COMMISSION IN WRITING OF  
26 ITS PLANS TO TEST MARKET. THE NOTICE SHALL DESCRIBE THE MARKET  
27 AREA IN WHICH THE TEST SHALL BE CONDUCTED; THE NAME OR NAMES OF

1 THE WHOLESALER OR WHOLESALERS WHO WILL BE SELLING THE MIXED  
2 SPIRIT DRINK; THE NAME OR NAMES OF THE BRAND OF MIXED SPIRIT  
3 DRINK BEING TESTED; AND THE PERIOD OF TIME DURING WHICH THE TEST-  
4 ING WILL TAKE PLACE. A MARKET TESTING PERIOD SHALL NOT EXCEED 18  
5 MONTHS.

6 (14) THE WHOLESALER SHALL DEVOTE REASONABLE EFFORTS AND  
7 RESOURCES TO SALES AND DISTRIBUTION OF ALL THE SUPPLIER'S PRO-  
8 DUCTS WHICH THE WHOLESALER HAS BEEN GRANTED THE RIGHT TO SELL AND  
9 DISTRIBUTE AND SHALL MAINTAIN REASONABLE SALES LEVELS.

10 (15) A SUPPLIER SHALL NOT WITHHOLD CONSENT TO ANY TRANSFER  
11 OF A WHOLESALER'S BUSINESS IF THE PROPOSED TRANSFEREE MEETS THE  
12 MATERIAL AND REASONABLE QUALIFICATIONS REQUIRED BY THE SUPPLIER.  
13 A WHOLESALER SHALL GIVE THE SUPPLIER WRITTEN NOTICE OF INTENT TO  
14 TRANSFER THE WHOLESALER'S BUSINESS. A SUPPLIER SHALL NOT UNREA-  
15 SONABLY DELAY A RESPONSE TO A REQUEST FOR A PROPOSED TRANSFER OF  
16 A WHOLESALER'S BUSINESS. HOWEVER, A TRANSFER OF A WHOLESALER'S  
17 BUSINESS WHICH IS NOT APPROVED BY THE SUPPLIER SHALL BE NULL AND  
18 VOID. A SUPPLIER SHALL NOT INTERFERE WITH, OR PREVENT, THE  
19 TRANSFER OF THE WHOLESALER'S BUSINESS IF THE PROPOSED TRANSFEREE  
20 IS A DESIGNATED MEMBER.

21 (16) A SUPPLIER AS PART OF THE WRITTEN AGREEMENT REQUIRED BY  
22 THIS SECTION MAY, SUBJECT TO THE PROVISIONS OF SUBSECTION (3)(1),  
23 REQUIRE A WHOLESALER TO DESIGNATE A SUCCESSOR MANAGER WHO SHALL  
24 BE SUBJECT TO PRIOR APPROVAL BY THE SUPPLIER. IN THE EVENT THE  
25 DESIGNATED SUCCESSOR MANAGER FAILS TO ASSUME THE ROLE OF APPROVED  
26 MANAGER OR FOR ANY REASON DOES NOT CONTINUE TO MANAGE THE  
27 WHOLESALER'S BUSINESS, AFTER ASSUMING THAT RESPONSIBILITY, THEN

1 ANY SUCCESSOR SHALL BE SUBJECT TO THE PRIOR APPROVAL OF THE  
2 SUPPLIER, SUBJECT TO THE PROVISIONS OF SUBSECTION (3)(1), NOT-  
3 WITHSTANDING THE TRANSFEREE'S INTEREST AS A DESIGNATED MEMBER.

4 (17) A SUPPLIER THAT HAS AMENDED, CANCELED, TERMINATED, OR  
5 REFUSED TO RENEW ANY AGREEMENT; HAS CAUSED A WHOLESALER TO RESIGN  
6 FROM AN AGREEMENT; OR HAS WITHHELD CONSENT TO ANY ASSIGNMENT OR  
7 TRANSFER OF A WHOLESALER'S BUSINESS, EXCEPT AS PROVIDED FOR IN  
8 THIS SECTION, SHALL PAY THE WHOLESALER REASONABLE COMPENSATION  
9 FOR THE DIMINISHED VALUE OF THE WHOLESALER'S BUSINESS OR OF ANY  
10 ANCILLARY BUSINESS WHICH HAS BEEN NEGATIVELY AFFECTED BY THE ACT  
11 OF THE SUPPLIER, OR BOTH. THE VALUE OF THE WHOLESALER'S BUSINESS  
12 OR ANCILLARY BUSINESS SHALL INCLUDE, BUT NOT BE LIMITED TO, ITS  
13 GOODWILL.

14 (18) EITHER PARTY MAY, AT ANY TIME, DETERMINE THAT MUTUAL  
15 AGREEMENT ON THE AMOUNT OF REASONABLE COMPENSATION CANNOT BE  
16 REACHED. SHOULD SUCH A DETERMINATION BE MADE, THE SUPPLIER OR  
17 THE WHOLESALER SHALL SEND WRITTEN NOTICE TO THE OTHER PARTY  
18 DECLARING THEIR INTENTION TO PROCEED WITH ARBITRATION.  
19 ARBITRATION SHALL PROCEED ONLY BY MUTUAL AGREEMENT OF BOTH  
20 PARTIES.

21 (19) THE MATTER OF DETERMINING THE AMOUNT OF COMPENSATION  
22 UNDER ARBITRATION MAY, BY AGREEMENT OF THE PARTIES, BE SUBMITTED  
23 TO A 5-MEMBER ARBITRATION PANEL CONSISTING OF 2 REPRESENTATIVES  
24 SELECTED BY THE SUPPLIER BUT UNASSOCIATED WITH THE AFFECTED SUP-  
25 PLIER, 2 WHOLESALER REPRESENTATIVES SELECTED BY THE WHOLESALER  
26 BUT UNASSOCIATED WITH THE WHOLESALER, AND AN IMPARTIAL  
27 ARBITRATOR.

1 (20) NOT MORE THAN 10 DAYS AFTER THE NOTICE TO ENTER INTO  
2 ARBITRATION HAS BEEN SENT, EACH PARTY SHALL REQUEST, IN WRITING,  
3 A LIST OF 5 ARBITRATORS FROM THE AMERICAN ARBITRATION  
4 ASSOCIATION. NOT MORE THAN 10 DAYS AFTER THE RECEIPT OF THE LIST  
5 OF 5 CHOICES, THE WHOLESALER ARBITRATORS AND THE SUPPLIER ARBI-  
6 TRATORS MAY STRIKE AND DISQUALIFY UP TO 2 NAMES EACH FROM THE  
7 LIST. SHOULD EITHER PARTY FAIL TO RESPOND WITHIN THE 10 DAYS OR  
8 SHOULD MORE THAN 1 NAME REMAIN, THE AMERICAN ARBITRATION ASSOCIA-  
9 TION SHALL MAKE THE SELECTION OF THE IMPARTIAL ARBITRATOR.

10 (21) NOT MORE THAN 30 DAYS AFTER THE LIST OF ARBITRATORS IS  
11 RECEIVED, THE WHOLESALER AND SUPPLIER SHALL EXCHANGE IN WRITING  
12 THE NAMES OF THEIR RESPECTIVE ARBITRATION PANEL REPRESENTATIVES.

13 (22) NOT MORE THAN 30 DAYS AFTER THE FINAL SELECTION OF THE  
14 ARBITRATION PANEL IS MADE, THE ARBITRATION PANEL SHALL CONVENE TO  
15 DECIDE THE DISPUTE. THE PANEL SHALL RENDER A DECISION BY MAJOR-  
16 ITY VOTE OF THE PARTICIPANTS WITHIN 20 DAYS FROM THE CONCLUSION  
17 OF THE ARBITRATION.

18 (23) THE COST OF THE IMPARTIAL ARBITRATOR, THE STENOGRAPHER,  
19 AND THE MEETING SITE SHALL BE EQUALLY DIVIDED BETWEEN THE WHOLE-  
20 SALER AND THE SUPPLIER. ALL OTHER COSTS SHALL BE PAID BY THE  
21 PARTY INCURRING THEM. THE AWARD OF THE ARBITRATION PANEL SHALL  
22 BE FINAL AND BINDING ON THE PARTIES.

23 (24) SHOULD EITHER PARTY FAIL TO ABIDE BY THE TIME LIMITA-  
24 TIONS AS PRESCRIBED IN SUBSECTIONS (20), (21), AND (22), OR FAIL  
25 OR REFUSE TO MAKE THE SELECTION OF ANY ARBITRATORS, OR FAIL TO  
26 PARTICIPATE IN THE ARBITRATION HEARINGS, THE OTHER PARTY SHALL  
27 MAKE THE SELECTION OF THEIR ARBITRATORS AND PROCEED TO

1 ARBITRATION. THE PARTY WHO HAS FAILED OR REFUSED TO COMPLY AS  
2 PRESCRIBED IN THIS SUBSECTION SHALL BE CONSIDERED TO BE IN  
3 DEFAULT. ANY PARTY CONSIDERED TO BE IN DEFAULT PURSUANT TO THIS  
4 SUBSECTION SHALL HAVE WAIVED ANY AND ALL RIGHTS THE PARTY WOULD  
5 HAVE HAD IN THE ARBITRATION AND SHALL BE CONSIDERED TO HAVE CON-  
6 SENTED TO THE DETERMINATION OF THE ARBITRATION PANEL.

7 (25) A WHOLESALER SHALL NOT WAIVE ANY OF THE RIGHTS GRANTED  
8 IN ANY PROVISION OF THIS SECTION. THIS SECTION SHALL NOT BE CON-  
9 STRUED TO LIMIT OR PROHIBIT GOOD FAITH DISPUTE SETTLEMENTS VOLUN-  
10 TARIY ENTERED INTO BY THE PARTIES.

11 (26) A SUCCESSOR TO A SUPPLIER THAT CONTINUES IN BUSINESS AS  
12 A MIXED SPIRIT DRINK MANUFACTURER, AN OUTSTATE SELLER OF MIXED  
13 SPIRIT DRINK, OR MASTER DISTRIBUTOR SHALL BE BOUND BY ALL TERMS  
14 AND CONDITIONS OF EACH AGREEMENT OF THE SUPPLIER WITH A WHOLE-  
15 SALER LICENSED IN THIS STATE THAT WERE IN EFFECT ON THE DATE ON  
16 WHICH THE SUCCESSOR RECEIVED THE DISTRIBUTION RIGHTS OF THE PRE-  
17 VIOUS SUPPLIER.

18 (27) THIS SECTION SHALL APPLY TO AGREEMENTS IN EXISTENCE ON  
19 THE EFFECTIVE DATE OF THIS SECTION AS WELL AS AGREEMENTS ENTERED  
20 INTO OR RENEWED AFTER THAT DATE.

21 (28) IF A SUPPLIER ENGAGES IN CONDUCT PROHIBITED UNDER THIS  
22 SECTION, A WHOLESALER WITH WHICH THE SUPPLIER HAS AN AGREEMENT  
23 MAY MAINTAIN A CIVIL ACTION AGAINST THE SUPPLIER TO RECOVER  
24 ACTUAL DAMAGES REASONABLY INCURRED AS THE RESULT OF THE PROHIB-  
25 ITED CONDUCT. IF A WHOLESALER ENGAGES IN CONDUCT PROHIBITED  
26 UNDER THIS SECTION, A SUPPLIER WITH WHICH THE WHOLESALER HAS AN  
27 AGREEMENT MAY MAINTAIN A CIVIL ACTION AGAINST THE WHOLESALER TO

1 RECOVER ACTUAL DAMAGES REASONABLY INCURRED AS THE RESULT OF THE  
2 PROHIBITED CONDUCT.

3 (29) A SUPPLIER THAT VIOLATES ANY PROVISION OF THIS SECTION  
4 IS LIABLE FOR ALL ACTUAL DAMAGES AND ALL COURT COSTS AND REASON-  
5 ABLE ATTORNEY FEES INCURRED BY A WHOLESALER AS A RESULT OF THAT  
6 VIOLATION. A WHOLESALER THAT VIOLATES ANY PROVISION OF THIS SEC-  
7 TION IS LIABLE FOR ALL ACTUAL DAMAGES AND ALL COURT COSTS AND  
8 REASONABLE ATTORNEY FEES INCURRED BY THE SUPPLIER AS A RESULT OF  
9 THAT VIOLATION.

10 (30) A SUPPLIER OR WHOLESALER MAY BRING AN ACTION FOR  
11 DECLARATORY JUDGMENT FOR DETERMINATION OF ANY CONTROVERSY ARISING  
12 PURSUANT TO THIS SECTION.

13 (31) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IF A  
14 COURT FINDS THAT A SUPPLIER HAS NOT ACTED IN GOOD FAITH IN  
15 EFFECTING THE AMENDMENT, TERMINATION, CANCELLATION, OR NONRENEWAL  
16 OF ANY AGREEMENT; OR HAS UNREASONABLY WITHHELD ITS CONSENT TO ANY  
17 ASSIGNMENT, TRANSFER, OR SALE OF A WHOLESALER'S BUSINESS, IT MAY  
18 AWARD EXEMPLARY DAMAGES, AS WELL AS ACTUAL DAMAGES, COURT COSTS,  
19 AND REASONABLE ATTORNEY FEES TO THE WHOLESALER WHO HAS BEEN DAM-  
20 AGED BY THE ACTION OF THE SUPPLIER.

21 (32) UPON PROPER APPLICATION TO THE COURT, A SUPPLIER OR  
22 WHOLESALER MAY OBTAIN INJUNCTIVE RELIEF AGAINST ANY VIOLATION OF  
23 THIS SECTION. IF THE COURT GRANTS INJUNCTIVE RELIEF OR ISSUES A  
24 TEMPORARY RESTRAINING ORDER, BOND SHALL NOT BE REQUIRED TO BE  
25 POSTED.

26 (33) THE PROCEDURE FOR RESOLVING ANY VIOLATION OF SUBSECTION  
27 (3)(A), (B), (C), (E), (F), (H), (I), (J), (K), (L), OR (4) SHALL



1 BE THE PROCEDURE PRESCRIBED BY THIS ACT AND THE ADMINISTRATIVE  
2 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328. ANY  
3 OTHER VIOLATION OF OR DISPUTE REGARDING THIS SECTION, UNLESS THE  
4 DISPUTE IS RESOLVED PURSUANT TO SUBSECTIONS (18) TO (24), SHALL  
5 ONLY BE RESOLVED BY A CIVIL ACTION IN COURT AS PROVIDED IN THIS  
6 SECTION AND NOT BY THE COMMISSION.