

2011 -- S 0486

=====  
LC01990  
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

—————  
A N A C T

RELATING TO ALCOHOLIC BEVERAGES -- WHOLESALER AGREEMENTS

Introduced By: Senator Maryellen Goodwin

Date Introduced: March 10, 2011

Referred To: Senate Special Legislation

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 3 of the General Laws entitled "ALCOHOLIC BEVERAGES" is  
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 13.1

4 ALCOHOLIC BEVERAGES SUPPLIER-WHOLESALER AGREEMENTS

5 **3-13.1-1. Short title.** – This act shall be known and may be cited as “The Alcoholic  
6 Beverage Fair Dealing Law.”

7 **3-13.1-2. Definitions.** – As used in this chapter:

8 (1) “Agreement” means any contract, agreement, or arrangement, whether expressed or  
9 implied, whether oral or written, for a definite or indefinite period between a supplier and a  
10 wholesaler pursuant to which a wholesaler has the right to purchase, resell, and distribute any or  
11 all brands of intoxicating beverages or wine offered by the supplier. The agreement between a  
12 supplier and a wholesaler is not considered a franchise relationship.

13 (2) “Good cause” means the failure by any party to an agreement, without reasonable  
14 excuse and justification, to comply substantially with a reasonable requirement imposed by either  
15 party.

16 (3) “Intoxicating beverages” means the same as defined in chapter 1 of this title.

17 (4) “Wine” means the same as defined in chapter 1 of this title.

18 (5) “Person” means a natural person, partnership, trust, agency, corporation, division of a  
19 corporation, or other form of business enterprise. Person also includes heirs, assigns, personal

1 representatives, and guardians.

2 (6) “Supplier” means any person engaged in business as a winery, manufacturer,  
3 importer, master wholesaler, broker, or agent of intoxicating beverages or wine which enters into  
4 an agreement with any wholesaler in this state to distribute any or all of its brands of intoxicating  
5 beverages or wine, and any successor-in-interest to that entity with respect to the agreement.

6 (7) “Territory” or “sales territory” means the geographic area of primary sales  
7 responsibility designated by an agreement between a wholesaler and supplier for any brand or  
8 brands of the supplier.

9 (8) “Wholesaler” means any person licensed to import or cause to be imported into this  
10 state, or to purchase or to be purchased in this state, intoxicating beverages or wine for resale or  
11 distribution to retailers licensed in this state, and any successor-in-interest to that entity.

12 **3-13.1-3. Purposes – Construction – Variation by contract prohibited.** – (a) This  
13 chapter shall be liberally construed and applied to promote its remedial purposes and policies.

14 (b) The purposes and policies of this chapter are:

15 (1) To regulate agreements between suppliers and their wholesalers to benefit the  
16 economy and enhance competition in this state and to promote moderation and obedience to the  
17 laws of this state and the United States controlling the distribution and sale of intoxicating  
18 beverages and wine;

19 (2) To protect wholesalers’ substantial initial and continuing investments of money, time  
20 and effort in their distributorships and to stimulate greater investment of those resources in these  
21 small businesses by assuring their continuation on a fair, equitable and nondiscriminatory basis;

22 (3) To enhance competition in the intoxicating beverages and wine industry by:

23 (i) Assuring the wholesaler is free to manage its business enterprise in the manner the  
24 wholesaler deems best, including the wholesaler’s right independently to establish its selling  
25 prices, to determine the efforts and resources which the wholesaler will exert to promote and  
26 develop the sale of a supplier’s products; and

27 (ii) Assuring the public and suppliers that wholesalers will price competitively, devote  
28 reasonable efforts and resources to sales of all supplier’s products marketed in this state and  
29 maintain satisfactory sales levels.

30 (4) To govern all relations between suppliers and their wholesalers, including any  
31 renewals to agreements between them, to the full extent consistent with the constitutions of this  
32 state and the United States.

33 (c) The effect of this chapter may not be varied by agreement. Any agreement purporting  
34 to do so is void and unenforceable to that extent only.

1           **3-13.1-4. Prior notification of cancellation.** – (a) Except as provided in subsection (c),  
2 no supplier or wholesaler may cancel, fail to renew, or otherwise terminate an agreement unless  
3 the supplier or wholesaler furnishes prior notification in accordance with subsection (b) to the  
4 affected party.

5           (b) The notification required under subsection (a) shall be in writing and sent to the  
6 affected party by certified mail, return receipt requested, not less than ninety (90) days before the  
7 date on which the agreement will be cancelled, not renewed, or otherwise terminated. The  
8 notification shall contain:

- 9           (1) A statement of intention to cancel, not renew, or otherwise terminate;
- 10           (2) A statement of all reasons, stated with particularity;
- 11           (3) The date on which the action shall take effect; and
- 12           (4) A statement of the remedy or remedies available to the affected party to cure the  
13 specified cause.

14           (c) A supplier or wholesaler may cancel, fail to renew or otherwise terminate an  
15 agreement without furnishing the prior notification required under this section only:

- 16           (1) In the event of insolvency, liquidation or bankruptcy of the affected party;
- 17           (2) In the event the affected party makes an assignment for the benefit of creditors or  
18 similar disposition of substantially all of the assets of that party's business; or
- 19           (3) In the event of a conviction or plea of guilty or no contest to a charge of violating a  
20 law or regulation, or the revocation of a license or permit, relating to business which materially  
21 and adversely affects the party's ability to continue in business.

22           **3-13.1-5. Cancellation of agreements – Good cause required.** – No supplier or  
23 wholesaler may cancel, fail to renew, or otherwise terminate an agreement unless the party  
24 intending that action has good cause for that action and, in any case in which prior notification is  
25 required under section 3-13.1-4, the party intending to act was furnished prior notification and the  
26 affected party has not corrected the conduct specified in that notification as the reason for  
27 cancellation, failure to renew, or termination, within the period specified in that notice.

28           **3-13.1-6. Prohibited conduct.** – No supplier shall:

- 29           (1) Induce or coerce, or attempt to induce or coerce, any wholesaler to accept delivery of  
30 any intoxicating beverages or wine or any other item or commodity which has not been ordered  
31 by the wholesaler. Provided, that recommendation, endorsement, exposition, persuasion, or  
32 argument is not deemed to constitute inducements, coercion or requirements prohibited by this  
33 section.
- 34           (2) Induce or coerce, or attempt to induce or coerce, any wholesaler to engage in any

1 illegal act or course of conduct or to resign from an agreement by means of any threat, expressed  
2 or implied, to cancel, fail to renew, otherwise terminate an agreement, any requirement imposed  
3 on the wholesaler pursuant to an agreement or any contract or other arrangement ancillary or  
4 collateral to these.

5 (3) Require a wholesaler to assent to any requirement, condition, understanding, or term  
6 of an agreement limiting the wholesaler's right to sell the product of any other supplier.

7 (4) Fix or maintain the price at which a wholesaler may resell intoxicating beverages or  
8 wine, whether by the terms or requirements imposed on the wholesaler under an agreement, the  
9 manner of their enforcement, or otherwise.

10 (5) Impose, attempt to impose, or enforce against a wholesaler any requirement, standard  
11 of performance, or term, including the terms of sale of intoxicating beverages or wines sold to the  
12 wholesalers, which discriminatory as compared with the requirements standards or terms imposed  
13 by the supplier on other similarly situated wholesalers within this state. Differences in any  
14 requirement, standard, or term imposed by a supplier under its agreement or in the manner of  
15 their enforcement are permitted only if and to the extent they are based on proper and justifiable  
16 distinctions considering the purposes of this chapter, and are not arbitrary.

17 (6) Fail to provide to each wholesaler of its brands after June 1, 2011 a written contract  
18 which conforms to this chapter and embodies the supplier's agreement with its wholesalers,  
19 including the essential requirements, standards of performance, and terms imposed by the  
20 supplier. In the event of failure to provide that written contract, any agreement in existence upon  
21 June 1, 2011 must conform to this chapter and is subject to this chapter until the written contract  
22 is provided.

23 **3-13.1-7. Transfer of business assets of stock.** – (a) No supplier shall, by terms of an  
24 agreement or otherwise, unreasonably withhold or delay approval of any assignment, sale or  
25 transfer of the stock of a wholesaler or all or any portion of a wholesaler's assets, wholesaler's  
26 voting stock, the voting stock of any parent corporation, or the beneficial ownership or control of  
27 any other entity owning or controlling a wholesaler, including the wholesaler's rights and  
28 obligations under the terms of an agreement whenever the person or persons to be substituted  
29 meet reasonable and express standards imposed not only upon the wholesaler but upon all other  
30 wholesalers of a supplier generally.

31 (b) Upon the death of one of the partners of a partnership operating the business of a  
32 wholesaler, no supplier shall deny the surviving partner or partners of that partnership the right to  
33 become a successor-in-interest to the agreement between the supplier and that partnership;  
34 provided the survivor has been active in the management of the partnership and is otherwise

1 capable of carrying on the business of the partnership.

2 (c) A wholesaler shall not transfer or agree to transfer any of its rights and obligations  
3 under the terms of any agreement without first giving prior notice to the supplier.

4 **3-13.1-8. Damages for improper cancellation, termination, or failure to renew --**

5 **Arbitration.** – (a) Any supplier which without good cause cancels, terminates or fails to renew  
6 any agreement, or unlawfully causes a wholesaler to resign from an agreement or unreasonably  
7 denies or withholds consent to any assignment, transfer or sale of business assets or capital stock  
8 or other equity securities of a wholesaler with whom that supplier has an agreement pursuant to  
9 subdivision 3-13.1-6(6), is subject to compensatory damages, equitable relief, or both.  
10 Compensatory damages include reasonable compensation for the value of the wholesaler’s  
11 business with relation to the affected brand or brands and the wholesaler’s goodwill, if any.

12 (b) The supplier and the wholesaler, may by the terms of an agreement or otherwise,  
13 submit the disputes set forth in subsection (a), including the compensation, if any, to be paid for  
14 the value of the wholesaler’s business, to a neutral arbitrator to be selected by the parties, or if  
15 they cannot agree, by the presiding justice of the Rhode Island superior court. The arbitration  
16 proceeding shall be held within the state and shall be governed by chapter 3 of title 10.  
17 Arbitration costs shall be paid one-half (1/2) by the wholesaler and one-half (1/2) by the supplier.  
18 The award of the arbitrator is final and binding on the parties.

19 (c) Unless otherwise ordered by the superior court, all of the terms and conditions of an  
20 agreement between the parties shall remain in full force and effect for a period not to exceed one  
21 year during the course of any arbitration or judicial proceedings brought to enforce any rights  
22 under an agreement or under this chapter. No supplier who, pursuant to an agreement with a  
23 wholesaler, has designated a sales territory for which the wholesaler is primarily responsible or in  
24 which the wholesaler is required to concentrate its efforts, shall enter into an agreement with any  
25 other wholesaler during that one year period for the purpose of establishing an additional  
26 wholesaler for any of its brands or products. Notwithstanding any pending arbitration proceeding,  
27 a party may petition the superior court in accordance with section 3-13.1-12 to obtain any relief  
28 as may be necessary to enforce this section.

29 **3-13.1-9. Sale of supplier.** – Except for discontinuance of all sales of a brand or brands  
30 in this state or for good cause, any person who purchases a supplier becomes obligated to all of  
31 the terms of any agreement in effect on the date of purchase. The acquiring supplier is not  
32 obligated to supply its brand or brands to the wholesalers of the acquired supplier. Nothing  
33 prevents the parties from negotiating a new agreement consistent with the provisions of this  
34 chapter. The term purchase includes, but is not limited to, a purchase of stock, purchase of assets,

1 lease, merger, or any other reorganization consolidation, or acquisition of a supplier.

2 **3-13.1-10. Sales territories exclusive.** – No supplier who, pursuant to an agreement with  
3 a wholesaler, has designated a sales territory for which a wholesaler is primarily responsible or in  
4 which a wholesaler is required to concentrate its efforts shall enter into an agreement with any  
5 other wholesaler for the purpose of establishing an additional wholesaler for any of its brands,  
6 including any brand or brands introduced after the effective date of the agreement, in all or part of  
7 the same territory.

8 **3-13.1-11. Right of free association.** – No supplier or wholesaler shall restrict or inhibit,  
9 directly in indirectly, the right of free association among suppliers or wholesalers for any lawful  
10 purpose.

11 **3-13.1-12. Civil actions.** – (a) If a supplier or wholesaler who is a party to an agreement  
12 pursuant to subdivision 3-13.1-6(6) fails to comply with this chapter or otherwise engages in  
13 conduct prohibited under this chapter, the affected party may maintain a civil action in the  
14 superior court in the county in which the wholesaler’s principal place of business or residence is  
15 located.

16 (b) In any action under this section, the court may grant any equitable relief that the court  
17 determines is necessary or appropriate considering the purposes of this chapter, to remedy the  
18 effects of any failure to comply with this chapter or the effect of conduct prohibited under this  
19 chapter.

20 (c) The prevailing party in any action under this section is entitled to actual damages as  
21 defined in section 3-13.1-8, plus interest and costs.

22 (d) To the extent the parties by agreement specify that disputes arising out of the  
23 supplier-wholesaler relationship shall be resolved by arbitration, that procedure shall be the  
24 exclusive remedy and may be compelled by either party upon proper application under the law of  
25 this state. An affected party may maintain a civil action in the superior court to enforce the  
26 provisions of subsection 3-13.1-8(c), notwithstanding any pending arbitration proceedings.

27 **3-13.1-13. Severability.** – If any provision of this chapter is held unconstitutional, that  
28 decision shall not affect the validity of the remainder of the chapter.

29 SECTION 2. This act shall take effect upon passage.

=====  
LC01990  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO ALCOHOLIC BEVERAGES -- WHOLESALER AGREEMENTS

\*\*\*

1           This act would regulate agreements between alcoholic beverage suppliers and their  
2 wholesalers to enhance competition in the state, and to promote moderation and obedience to  
3 federal and state liquor laws.

4           This act would take effect upon passage.

=====  
LC01990  
=====