

1 HB289
2 136649-1
3 By Representatives Ball and Hubbard (J)
4 RFD: Economic Development and Tourism
5 First Read: 09-FEB-12

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8 SYNOPSIS: Under existing law, a special class of beer
9 manufacturers called brewpubs, permitted under the
10 Alabama Brewpub Act, may sell beer brewed
11 on-premises to consumers for on-premises
12 consumption only.

13 This bill would allow brewpub licensees to
14 conduct on-premise tastings or samplings of their
15 products and sell their products for off-premises
16 consumption.

17 This bill would allow licensed manufacturers
18 of certain alcoholic beverages and table wines to
19 sell their products for off-premises consumption.

20 This bill would allow licensed manufacturers
21 of table wine to conduct on-premise tastings or
22 samplings of their products.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 To amend Sections 28-3A-6, and 28-4A-3, Code of
2 Alabama 1975, as amended by Act 2011-630, 2011 Regular
3 Session, and Section 28-7-18, Code of Alabama 1975, relating
4 to brewpubs; to allow brewpub licensees to conduct on premise
5 tastings or samplings of their products and sell their
6 products for off premises consumption; to allow licensed
7 manufacturers of certain alcoholic beverages and table wines
8 to sell their products for off-premises consumption and allow
9 licensed manufacturers of table wine to conduct on-premise
10 tasting or samplings of their products.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Sections 28-3A-6, and 28-4A-3, Code of
13 Alabama 1975, as amended by Act 2011-630, 2011 Regular
14 Session, and Section 28-7-18, Code of Alabama 1975, are
15 amended to read as follows:

16 "§28-3A-6.

17 "(a) Upon applicant's compliance with the provisions
18 of this chapter and the regulations made thereunder, the board
19 shall issue to applicant a manufacturer license which shall
20 authorize the licensee to manufacture or otherwise distill,
21 produce, ferment, brew, bottle, rectify, or compound alcoholic
22 beverages within this state or for sale or distribution within
23 this state. No person shall manufacture or otherwise distill,
24 produce, ferment, brew, bottle, rectify or compound alcoholic
25 beverages within this state or for sale or distribution within
26 this state or to the state, the board, or any licensee of the
27 board, unless such person or the authorized representative of

1 the person shall be granted a manufacturer license issued by
2 the board.

3 "(b) No manufacturer licensee shall sell any
4 alcoholic beverages direct to any retailer or for consumption
5 on the premises where sold except as specified under
6 subsection (h) (1), nor sell or deliver any such alcoholic
7 beverages in other than original containers approved as to
8 capacity by the board and in accordance with standards of fill
9 prescribed by the U. S. Treasury Department, nor maintain or
10 operate within the state any place or places, other than the
11 place or places covered by the manufacturer license, where
12 alcoholic beverages are sold or where orders are taken.

13 "(c) Each manufacturer licensee shall be required to
14 file with the board, prior to making any sales in Alabama a
15 list of its labels to be sold in Alabama and shall file with
16 the board its federal certificate of label approvals or its
17 certificates of exemption as required by the U. S. Treasury
18 Department. All liquors and wines whose labels have not been
19 registered as herein provided for shall be considered
20 contraband and may be seized by the board or its agents, or
21 any peace officer of the State of Alabama without a warrant
22 and the goods shall be delivered to the board and disposed of
23 as provided by law.

24 "(d) All such manufacturer licensees shall be
25 required to mail to the board prior to the twentieth day of
26 each month a consolidated report of all shipments of alcoholic
27 beverages made to each wholesaler during the preceding month.

1 Such reports shall be in such form and containing such
2 information as the board may prescribe.

3 "(e) Every manufacturer shall keep at its principal
4 place of business within the state, daily permanent records
5 which shall show the quantities of raw materials received and
6 used in the manufacture of alcoholic beverages, and the
7 quantities of alcoholic beverages manufactured and stored, the
8 sale of alcoholic beverages, the quantities of alcoholic
9 beverages stored for hire or transported for hire by or for
10 the licensee and the names and addresses of the purchasers or
11 other recipients thereof.

12 "(f) Every place licensed as a manufacturer shall be
13 subject to inspection by members of the board or by persons
14 duly authorized and designated by the board at any and all
15 times of the day or night as they may deem necessary, for the
16 detection of violations of this chapter, of any law, or of the
17 rules and regulations of the board, or for the purpose of
18 ascertaining the correctness of the records required to be
19 kept by the licensees. The books and records of such licensees
20 shall, at all times, be open to inspection by members of the
21 board, or by persons duly authorized and designated by the
22 board. Members of the board and its duly authorized agents
23 shall have the right, without hindrance, to enter any place
24 which is subject to inspection hereunder, or any place where
25 such records are kept for the purpose of making such
26 inspections and making transcripts thereof.

1 "(g) Licenses issued under this section shall,
2 unless revoked in the manner provided in this chapter, be
3 valid for the license year commencing January 1 of each year.

4 "(h) (1) A manufacturer licensee actively and
5 continuously engaged in the manufacture of alcoholic beverages
6 on the manufacturer's licensed premises in the State of
7 Alabama may conduct tastings or samplings on the licensed
8 premises, as regulated by the ABC Board except as to quantity
9 and hours of operation, or as otherwise provided by statute,
10 and for that purpose give away or sell alcoholic beverages
11 manufactured there for ~~consumption on only one premises where~~
12 manufactured on- or off-premises consumption.

13 "(2) All alcoholic beverages manufactured and
14 retained on the manufacturer's licensed premises for tasting
15 or sampling shall remain on the premises and be dispensed from
16 a barrel or keg or other original containers.

17 "(i) (1) In addition to the licenses provided for by
18 Chapter 3A of this title, and any county or municipal license,
19 there is levied on the manufacturer of the alcoholic beverages
20 dispensed on the premises the privilege or excise tax imposed
21 on beer by Sections 28-3-184 and 28-3-190; and imposed on
22 table wine by Section 28-7-18; and imposed on liquor by
23 Sections 28-3-200 to 28-3-205, inclusive. Every manufacturer
24 licensee shall file the tax returns, pay the taxes, and
25 perform all obligations imposed on wholesalers at the times
26 and places set forth therein. It shall be unlawful for any
27 manufacturer licensee who is required to pay the taxes so

1 imposed in the first instance to fail or refuse to add to the
2 sale price and collect from the purchaser the required amount
3 of tax, it being the intent and purpose of this provision that
4 each of the taxes levied is in fact a tax on the consumer,
5 with the manufacturer licensee who pays the tax in the first
6 instance acting merely as an agent of the state for the
7 collection and payment of the tax levied by Section 28-3-184;
8 as an agent for the county or municipality for the collection
9 and payment of the tax levied by Section 28-3-190; as an agent
10 for the county or municipality for collection and payment of
11 the tax levied by Section 28-7-18; and as an agent for the
12 state for collection and payment of the tax levied by Sections
13 28-3-200 to 28-3-205, inclusive. (2) The manufacturer
14 licensee shall keep and maintain all records required to be
15 kept and maintained by manufacturer, wholesaler, and retailer
16 licensees for the tax so levied.

17 "§28-4A-3.

18 "(a) In addition to the licenses authorized to be
19 issued and renewed by the board pursuant to the Alcoholic
20 Beverage Licensing Code codified as Chapter 3A of this title,
21 the board, upon applicant's compliance with the provisions of
22 this chapter and with Chapter 3A and the regulations made
23 thereunder, is authorized to issue to a qualified applicant a
24 brewpub license which shall authorize the licensee to
25 manufacture or brew beer, in a quantity not to exceed 10,000
26 barrels in any one year and to sell beer brewed on the
27 licensed premises in unpackaged form at retail for ~~on-premises~~

1 on- or off-premises consumption ~~at the licensed premises~~ only,
2 to sell beer brewed on the premises in original, unopened
3 barrel or keg containers to any licensed wholesaler designated
4 by a brewpub licensee pursuant to Sections 28-8-2 and 28-9-3
5 for resale to retail licensees, and to purchase beer,
6 including draft or keg beer, in original, unopened containers
7 from licensed wholesalers and to sell such beer at retail for
8 on-premises consumption only, in a room or rooms or place on
9 the licensed premises at all times accessible to the use and
10 accommodation of the general public, subject to the following
11 conditions:

12 "(1) The brewpub premises must be located in an
13 historic building or site as defined in Section 40-8-1, or in
14 a registered historic district, or in any economically
15 distressed area designated as suitable by the municipal or
16 county governing body, in a wet county or wet municipality, in
17 which county beer was brewed for public consumption prior to
18 the ratification of the Eighteenth Amendment to the U.S.
19 Constitution in 1919.

20 "(2) The proposed location of the premises shall
21 not, at the time of the original application, be prohibited by
22 a valid zoning ordinance or other ordinance in the valid
23 exercise of police power by the governing body of the
24 municipality or county in which the brewpub is located.

25 "(3) Beer brewed by the brewpub licensee shall be
26 packaged or contained in barrels from which the beer is to be
27 dispensed only on the premises where brewed for consumption on

1 the premises or sold in original, unopened barrel or keg
2 containers to any designated wholesaler licensee for resale to
3 retailer licensees.

4 "(4) The brewpub must contain and operate a
5 restaurant or otherwise provide food for consumption on the
6 premises.

7 "(5) The brewpub may not sell any alcoholic
8 beverages if it is not actively and continuously engaged in
9 the manufacture or brewing of alcoholic beverages on the
10 brewpub's licensed premises.

11 "(6) The brewpub may not conduct tasting or
12 samplings on its premises as regulated by the ABC Board except
13 as to quantity and hours of operation.

14 "(b) The annual license fee levied and prescribed
15 for a license as a brewpub issued or renewed by the board
16 pursuant to the authority of this chapter is \$1,000.

17 "(c) Except as provided in this subsection, the
18 provisions of this title shall be applicable. The provisions
19 of Section 28-3-4 and subsection (b) of Section 28-3A-6, shall
20 not be applicable with regard to beer brewed by the brewpub
21 and sold and dispensed on the brewpub premises. In all other
22 respects, Section 28-3-4 and Section 28-3A-6(b) shall be
23 applicable.

24 "§28-7-18.

25 "(a) No manufacturer shall sell any table wine
26 direct to any retailer or for consumption on the premises
27 where sold, nor sell or deliver any such table wine in other

1 than original containers, nor shall any manufacturer maintain
2 or operate within this state any place or places, other than
3 the place or places covered by his or its license where table
4 wine is sold or where orders therefor are taken. Provided,
5 further, that table wine which is manufactured in Alabama may
6 be sold directly at retail by the licensed manufacturer only
7 on the manufacturer's premises, for on-premise or off-premise
8 consumption, or conduct tastings or samplings on the licensed
9 premises, as regulated by the ABC Board except as to quantity
10 and hours of operation.

11 " (b) (1) There is hereby levied and assessed, upon
12 wine manufactured in Alabama and sold by the manufacturer
13 directly at retail on the premises where it is manufactured,
14 as provided in subsection (a), or dispensed, as free samples
15 of not more than six ounces, in the tasting room or wine
16 cellar on the manufacturer's premises, an excise tax, measured
17 by and graduated in accordance with the volume of such wine
18 sold or dispensed, in an amount equal to forty-five cents
19 (\$.45) per liter.

20 " (2) The tax hereby levied on retail sales on a
21 manufacturer's premises shall be added to the sales price of
22 all table wine sold at retail by the manufacturer, as provided
23 in subsection (a), and shall be collected from the consumers
24 making the purchases.

25 " (c) The tax levied by subsection (b) shall be
26 collected by a return and remitted, monthly, as follows:

1 "(1) Not later than the fifteenth day of the month
2 following the month in which table wine was dispensed as free
3 samples or sold at retail as provided in subsection (a), the
4 manufacturer shall file with the board, on a form and in the
5 manner prescribed by the board, a return showing taxes due at
6 thirty-eight cents (\$.38) per liter of the table wine
7 dispensed or sold at retail during the previous month; the
8 taxes due at such rate shall be remitted to the board along
9 with the return.

10 "(2) Not later than the fifteenth day of the month
11 following the month in which table wine was dispensed as free
12 samples or sold at retail as provided in subsection (a), the
13 manufacturer shall file with the municipality within which the
14 table wine was dispensed or sold at retail within its
15 corporate limits, or, where dispensed or sold at retail
16 outside of the corporate limits of any municipality, with the
17 county within which the table wine was dispensed or sold at
18 retail, a return showing taxes at seven cents (\$.07) per liter
19 of the table wine dispensed or sold at retail during the
20 previous month; the taxes due at such rate shall be remitted
21 to the county or municipality along with the return.

22 "(3) All taxes imposed, levied, and collected under
23 this section shall be deposited and credited in the same
24 manner as are other table wine taxes.

25 "(d) Manufacturers who manufacture table wine within
26 Alabama shall provide to the board monthly reports, in the
27 form, time, and manner prescribed by the board, reporting

1 gallorage sold and gallorage exported for sale outside the
2 state during the previous month.

3 "(e) The tax herein levied is exclusive and shall be
4 in lieu of all other and additional taxes of the state,
5 county, and municipality imposed on or measured by the sale or
6 volume of sale of table wine; provided that nothing herein
7 contained shall be construed to exempt the retail sale of
8 table wine from the levy of tax on general retail sales by the
9 state, county, or municipality in the nature of, or in lieu
10 of, a general sales tax."

11 Section 2. This act shall become effective
12 immediately following its passage and approval by the
13 Governor, or its otherwise becoming law.