

1 HB406  
2 115987-1  
3 By Representative Robinson (O)  
4 RFD: Tourism and Travel  
5 First Read: 21-JAN-10

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8 SYNOPSIS: Under existing law, alcohol manufacturers  
9 located in Alabama that produce beer are not  
10 permitted to sell any alcohol on-premises. The only  
11 exception is a special class of beer manufacturers  
12 called brewpubs, permitted under the Alabama  
13 Brewpub Act, which may sell beer brewed on-premises  
14 to consumers for on-premises consumption only.

15 This bill would eliminate the distinction  
16 between beer manufacturers and brewpubs, permitting  
17 any beer manufacturer located in Alabama to sell  
18 alcohol on-premises.

19  
20 A BILL  
21 TO BE ENTITLED  
22 AN ACT  
23

24 To amend Chapter 4A of Title 28, Sections 28-4A-1 to  
25 28-4A-6, inclusive, Code of Alabama 1975, known as the Alabama  
26 Brewpub Act, to eliminate the distinction between beer

1 manufacturer and brewpub, to allow all beer manufacturers to  
2 sell alcohol on-premises.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 28-4A-1 to 28-4A-6, inclusive,  
5 Code of Alabama 1975, are amended to read as follows:

6 "§28-4A-1.

7 This chapter shall be known as and may be cited as  
8 the "Alabama ~~Brewpub~~ Brewery Modernization Act."

9 "§28-4A-2.

10 "(a) The words and phrases used in this chapter  
11 shall have the meanings ascribed to them in Section 28-3-1,  
12 and any acts amendatory thereof, supplementary thereto or  
13 substituted therefor.

14 "(b) The following words or phrases, whenever they  
15 appear in this chapter, unless the context clearly indicates  
16 otherwise, shall have the meaning ascribed to them in this  
17 subsection:

18 "(1) ~~BREW PUB~~ BREWERY. Any premises upon which beer  
19 is manufactured or brewed, ~~subject to the barrel production~~  
20 ~~limitation prescribed in this chapter, for consumption~~  
21 ~~exclusively on the premises.~~

22 "(2) PREMISES. Any building, structure or portion  
23 thereof ~~designated as a historic building and site as defined~~  
24 ~~in Section 40-8-1,~~ in which is located the operations of a  
25 ~~brewpub~~ brewery.

26 "§28-4A-3.

1           "~~(a) In addition to the licenses authorized to A~~  
2           ~~brewery must obtain an alcohol manufacturer's license which~~  
3           ~~shall~~ be issued and renewed by the board pursuant to the  
4           Alcoholic Beverage Licensing Code codified as Chapter 3A,  
5           Title 28, ~~the board, upon applicant's compliance with the~~  
6           ~~provisions of this chapter and with Chapter 3A, Title 28, and~~  
7           ~~the regulations made thereunder, is authorized to issue to a~~  
8           ~~qualified applicant a brewpub license which shall authorize~~  
9           ~~the licensee to manufacture or brew beer in a quantity not to~~  
10           ~~exceed 10,000 barrels in any one year and to sell such beer in~~  
11           ~~unpackaged form at retail for on-premises consumption only,~~  
12           ~~and to~~ and abide by all regulations and fees associated with  
13           that license. Beer which is manufactured in Alabama may be  
14           sold directly at retail by the licensed manufacturer on the  
15           manufacturer's premises, for on-premises consumption only, or  
16           it may be sold to a licensed wholesaler. A brewery may  
17           purchase beer in original unopened containers from licensed  
18           wholesalers and ~~to~~ sell such beer at retail for on-premises  
19           consumption only, in a room or rooms or place on the licensed  
20           premises at all times accessible to the use and accommodation  
21           of the general public, subject to the following conditions:

22           "~~(1) The brewpub premises must be located in an~~  
23           ~~historic building or site as defined in Section 40-8-1, in a~~  
24           ~~wet county or wet municipality, in which county beer was~~  
25           ~~brewed for public consumption prior to the ratification of the~~  
26           ~~Eighteenth Amendment to the U.S. Constitution in 1919.~~

1           ~~"(2)(1)~~ The proposed location of the premises shall  
2 not, at the time of the original application, be prohibited by  
3 a valid zoning ordinance or other ordinance in the valid  
4 exercise of police power by the governing body of the  
5 municipality or county in which the ~~brewpub~~ brewery is  
6 located.

7           ~~"(3)~~ Beer brewed by the ~~brewpub~~ licensee shall not  
8 be possessed, sold or dispensed except on the premises where  
9 brewed, and shall not be packaged or contained in other than  
10 barrels from which the beer is to be dispensed on the premises  
11 for consumption on the premises.

12           ~~"(4)(2)~~ The ~~brewpub~~ must brewery may contain and  
13 operate a restaurant with a seating capacity of not less than  
14 80.

15           ~~"(b)~~ The annual license fee levied and prescribed  
16 for a license as a ~~brewpub~~ issued or renewed by the board  
17 pursuant to the authority of this chapter is \$1,000. A brewery  
18 may offer tours of its facility to the general public and may  
19 provide free samples to be consumed on-premises as a way to  
20 promote its products.

21           ~~"(c)~~ Except as provided in this subsection, the  
22 provisions of Title 28 shall be applicable. The provisions of  
23 Section 28-3-4 and subsection (b) of Section 28-3A-6, shall  
24 not be applicable with regard to beer brewed by the ~~brewpub~~  
25 brewery and sold and dispensed on the ~~brewpub~~ brewery  
26 premises. In all other respects, Section 28-3-4 and Section  
27 28-3A-6(b) shall be applicable.

1                   "§28-4A-4.

2                   "(a) In addition to the licenses provided for by  
3 this chapter and any county or municipal license, for any  
4 on-premises retail sales of beer manufactured by the brewery  
5 there is levied on the ~~brewpub~~ brewery the privilege or excise  
6 taxes imposed by Sections 28-3-184 and 28-3-190. ~~Every brewpub~~  
7 For any on-premises retail sales of beer manufactured by the  
8 brewery, every brewery licensee shall file the tax returns,  
9 pay the taxes and perform all obligations imposed on  
10 wholesalers at the times and places set forth therein. It  
11 shall be unlawful for any ~~brewpub~~ brewery licensee who is  
12 required to pay the taxes so imposed in the first instance to  
13 fail or refuse to add to the sales price and collect from the  
14 purchaser the required amount of tax, it being the intent and  
15 purpose of this provision that each of the taxes levied is in  
16 fact a tax on the consumer, with the ~~brewpub~~ brewery licensee  
17 who pays the tax in the first instance acting merely as an  
18 agent of the state for the collection and payment of the tax  
19 levied by Section 28-3-184 and as an agent of the county or  
20 municipality for the collection and payment of the tax levied  
21 by Section 28-3-190.

22                   "(b) ~~The brewpub~~ For on-premises retail sales of  
23 beer manufactured by the brewery, the brewery shall be  
24 required to keep and maintain all of the records otherwise  
25 required to be kept and maintained by manufacturer,  
26 wholesaler, and retailer licensees.

1           "~~The brewpub~~ If a brewery chooses to limit sales  
2 of beer it manufactures exclusively to on-premises retail  
3 sales, the brewery shall appoint a licensed wholesaler  
4 designee in order to preserve Section 28-9-1. In addition, if  
5 all sales of the brewery's beer are limited to on-premises  
6 retail sales, the ~~brewpub~~ brewery shall be exempt from  
7 Sections 28-9-3 through 28-9-11. Otherwise, if a brewery  
8 chooses to sell the beer it manufactures to a licensed  
9 wholesaler, all provisions of Chapter 9 of Title 28 shall  
10 apply.

11           "(d) A brewery may pay a fee to the board of one  
12 hundred dollars (\$100) to obtain a special events permit valid  
13 for a period not to exceed 48 hours. This special events  
14 permit will allow the brewery to sell beer it manufactures  
15 directly to a special events retail licensee for the purpose  
16 of promoting the brewery's products at festivals and other  
17 special events.

18           "(e) A brewery may pay a fee to the board of one  
19 hundred dollars (\$100) to obtain an on-premises special events  
20 permit valid for a period not to exceed 48 hours. This  
21 on-premises special events permit will allow the licensed  
22 manufacturer to sell beer directly at retail on the  
23 manufacturer's premises, for off-premises consumption.  
24 On-premises special events permits may not be issued more than  
25 once per calendar year per brewery.

26           "§28-4A-5.

1            "A violation of any provision of this chapter shall  
2            constitute an unlawful act. A finding by the board that the  
3            ~~brewpub~~ brewery licensee is guilty of violating any provision  
4            of this chapter shall effect an automatic revocation of the  
5            license.

6            "§28-4A-6.

7            "The Legislature finds that it is in the best  
8            interest of the public welfare of the State of Alabama to  
9            ~~preserve and redevelop the original "downtown" municipal areas~~  
10           ~~of this state and to further promote the preservation and~~  
11           ~~redevelopment of historic buildings and sites. The Legislature~~  
12           ~~finds that an effective way of facilitating the urban~~  
13           ~~redevelopment program and the preservation of historic~~  
14           ~~buildings and sites is by creating a single exception to the~~  
15           ~~existing alcoholic beverage laws to authorize and permit the~~  
16           ~~establishment of brewpubs located in historic buildings and~~  
17           ~~sites in urban redevelopment areas of those municipalities~~  
18           ~~located within counties where the brewing of beer for~~  
19           ~~consumption by the public had historically been located. The~~  
20           ~~policy and intent of the Legislature in the enactment of this~~  
21           ~~chapter is to promote the public welfare by further regulating~~  
22           ~~and controlling alcoholic beverage transactions in Alabama~~  
23           ~~under the control and supervision of the Alabama Alcoholic~~  
24           ~~Beverage Control Board to accomplish this legislative purpose~~  
25           ~~set forth herein. promote the growth of the state's brewing~~  
26           ~~industry. Eighteen years after the passage of the Alabama~~  
27           ~~Brewpub Act, only two brewpubs are currently in operation in~~



1 the state, and there are only two breweries distributing beer  
2 via wholesalers. These beer producers are subjected to  
3 extensive regulations and limitations not imposed on Alabama  
4 wineries. In the interest of justice and promoting local  
5 industry in the state, the Legislature finds an effective way  
6 to assist these small businesses is to grant them some of the  
7 same privileges enjoyed by the state's wineries."

8           Section 2. This act shall become effective  
9 immediately following its passage and approval by the  
10 Governor, or its otherwise becoming law.