

1 SB192
2 130835-5
3 By Senators Holtzclaw, Marsh, Whatley, Singleton, Smitherman
4 and Sanford
5 RFD: Small Business
6 First Read: 09-MAR-11

1 SB192

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4 ENROLLED, An Act,

5 Relating to the regulation of alcoholic beverages;
6 to amend the alcoholic beverages license provisions for
7 manufacturers as defined and provided in Section 28-3A-6, Code
8 of Alabama 1975, and for brewpubs as defined and provided in
9 the Alabama Brewpub Act, codified as Chapter 4A, Title 28,
10 Code of Alabama 1975; to amend the manufacturer license set
11 forth in Section 28-3A-6, Code of Alabama 1975, to permit a
12 manufacturer licensee engaged in the manufacture of alcoholic
13 beverages in Alabama to conduct unrestricted tastings or
14 samplings on only one licensed premises by giving away or
15 selling alcoholic beverages manufactured where dispensed for
16 on-premises consumption; to require and provide for the
17 collection and payment of taxes on alcoholic beverages
18 dispensed on the premises; and to amend Sections 28-4A-2,
19 28-4A-3, 28-4A-4, and 28-4A-6, Code of Alabama 1975, to permit
20 the sale by the brewpub in original, unopened keg or barrel
21 containers to any licensed wholesaler designated by the
22 brewpub licensee pursuant to Sections 28-8-2 and 28-9-3, Code
23 of Alabama 1975, and to permit the brewpub to buy beer,
24 including draft or keg beer, of other manufacturers in
25 original, unopened containers from any designated licensed

1 wholesaler for resale on the brewpub's premises; to require
2 and provide for the collection and payment of taxes on
3 on-premises sales by a brewpub licensee; and to provide for
4 the location of brewpubs.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Section 28-3A-6, Code of Alabama 1975,
7 providing for the license of an alcoholic beverage
8 manufacturer, is amended to read as follows:

9 "§28-3A-6.

10 "(a) Upon applicant's compliance with the provisions
11 of this chapter and the regulations made thereunder, the board
12 shall issue to applicant a manufacturer license which shall
13 authorize the licensee to manufacture or otherwise distill,
14 produce, ferment, brew, bottle, rectify or compound alcoholic
15 beverages within this state or for sale or distribution within
16 this state. No person shall manufacture or otherwise distill,
17 produce, ferment, brew, bottle, rectify or compound alcoholic
18 beverages within this state or for sale or distribution within
19 this state or to the state, the board, or any licensee of the
20 board, unless such person or his authorized representative
21 shall be granted a manufacturer license issued by the board.

22 "(b) No manufacturer licensee shall sell any
23 alcoholic beverages direct to any retailer or for consumption
24 on the premises where sold except as specified under
25 subsection (h) (1), nor sell or deliver any such alcoholic

1 beverages in other than original containers approved as to
2 capacity by the board and in accordance with standards of fill
3 prescribed by the U. S. Treasury Department, nor maintain or
4 operate within the state any place or places, other than the
5 place or places covered by the manufacturer license, where
6 alcoholic beverages are sold or where orders are taken.

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

18 "(d) All such manufacturer licensees shall be
19 required to mail to the board prior to the twentieth day of
20 each month a consolidated report of all shipments of alcoholic
21 beverages made to each wholesaler during the preceding month.
22 Such reports shall be in such form and containing such
23 information as the board may prescribe.

24 "(e) Every manufacturer shall keep at his or its
25 principal place of business within the state, daily permanent

1 records which shall show the quantities of raw materials
2 received and used in the manufacture of alcoholic beverages,
3 and the quantities of alcoholic beverages manufactured and
4 stored, the sale of alcoholic beverages, the quantities of
5 alcoholic beverages stored for hire or transported for hire by
6 or for the licensee and the names and addresses of the
7 purchasers or other recipients thereof.

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

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

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

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

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

1 sale price and collect from the purchaser the required amount
2 of tax, it being the intent and purpose of this provision that
3 each of the taxes levied is in fact a tax on the consumer,
4 with the manufacturer licensee who pays the tax in the first
5 instance acting merely as an agent of the state for the
6 collection and payment of the tax levied by Section 28-3-184;
7 as an agent for the county or municipality for the collection
8 and payment of the tax levied by Section 28-3-190; as an agent
9 for the county or municipality for collection and payment of
10 the tax levied by Section 28-7-18; and as an agent for the
11 state for collection and payment of the tax levied by Sections
12 28-3-200 to 28-3-205, inclusive.

13 "(2) The manufacturer licensee shall keep and
14 maintain all records required to be kept and maintained by
15 manufacturer, wholesaler, and retailer licensees for the tax
16 so levied."

17 Section 2. Sections 28-4A-2, 28-4A-3, 28-4A-4, and
18 28-4A-6, Code of Alabama 1975, are amended to read as follows:

19 "§28-4A-2.

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

24 "(b) The following words or phrases, whenever they
25 appear in this chapter, unless the context clearly indicates

1 otherwise, shall have the meaning ascribed to them in this
2 subsection:

3 "(1) BREWPUB. Any premises upon which beer is
4 actively and continuously manufactured or brewed, subject to
5 the barrel production limitation prescribed in this chapter,
6 for consumption on the premises where manufactured, or for
7 sale to any designated wholesaler licensee for resale to
8 retail licensees.

9 "(2) PREMISES. Any building, structure or portion
10 thereof designated as a historic building and site as defined
11 in Section 40-8-1, or located in a registered historic
12 district or located in any economically distressed area
13 designated as suitable by the municipal or county governing
14 body, in which is located the operations of a brewpub.

15 "§28-4A-3.

16 "(a) In addition to the licenses authorized to be
17 issued and renewed by the board pursuant to the Alcoholic
18 Beverage Licensing Code codified as Chapter 3A, Title 28, the
19 board, upon applicant's compliance with the provisions of this
20 chapter and with Chapter 3A, Title 28, and the regulations
21 made thereunder, is authorized to issue to a qualified
22 applicant a brewpub license which shall authorize the licensee
23 to manufacture or brew beer, in a quantity not to exceed
24 10,000 barrels in any one year and to sell such beer brewed on
25 the licensed premises in unpackaged form at retail for

1 on-premises consumption at the licensed premises only, to sell
2 such beer brewed on the premises in original, unopened barrel
3 or keg containers to any licensed wholesaler designated by a
4 brewpub licensee pursuant to Sections 28-8-2 and 28-9-3 for
5 resale to retail licensees, and to purchase beer, including
6 draft or keg beer, in original, unopened containers from
7 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.

1 "(3) Beer brewed by the brewpub licensee shall be
2 packaged or contained in barrels from which the beer is to be
3 dispensed only on the premises where brewed for consumption on
4 the premises or sold in original, unopened barrel or keg
5 containers to any designated wholesaler licensee for resale to
6 retailer licensees.

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

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

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 Title 28 shall be applicable. The provisions of
19 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 "§28-4A-4.

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

19 "(b) The brewpub shall be required to keep and
20 maintain all of the records otherwise required to be kept and
21 maintained by manufacturer, wholesaler, and retailer
22 licensees.

23 "(c) The brewpub shall appoint a licensed wholesaler
24 designee in order to preserve Section 28-9-1. In addition, for

1 on-premises sales of beer brewed by the brewpub licensee, the
2 brewpub shall be exempt from Sections 28-9-3 through 28-9-11.

3 "§28-4A-6.

4 "The Legislature finds that it is in the best
5 interest of the public welfare of the State of Alabama to
6 preserve and redevelop the "downtown" municipal areas and
7 registered historic districts and certain economically
8 distressed areas of this state and to further promote the
9 preservation and redevelopment of historic buildings and
10 sites. The Legislature finds that an effective way of
11 facilitating the urban redevelopment program and the
12 preservation of historic buildings and sites, and registered
13 historic districts and any economically distressed area
14 designated as suitable by the municipal or county governing
15 body is by creating a single exception to the existing
16 alcoholic beverage laws to authorize and permit the
17 establishment of brewpubs located in such historic buildings,
18 sites, or districts in urban redevelopment areas or
19 economically distressed areas of those municipalities located
20 within counties where the brewing of beer for consumption by
21 the public had historically been located. The policy and
22 intent of the Legislature in the enactment of this chapter is
23 to promote the public welfare by further regulating and
24 controlling alcoholic beverage transactions in Alabama under
25 the control and supervision of the Alabama Alcoholic Beverage

1 Control Board to accomplish this legislative purpose set forth
2 herein."

3 Section 3. The provisions of this act are severable.
4 If any part of this act is declared invalid or
5 unconstitutional, that declaration shall not affect the part
6 which remains.

7 Section 4. This act shall become effective
8 immediately following its passage and approval by the
9 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB192

Senate 05-APR-11

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Amended and passed 31-MAY-11

Senate concurred in House amendment 01-JUN-11

By: Senator Holtzclaw