

1 SB358
2 137436-1
3 By Senators Whatley and Dial
4 RFD: Job Creation and Economic Development
5 First Read: 23-FEB-12

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8 SYNOPSIS: Under existing law, license fees are levied
9 and issued by the ABC Board to wine retailers,
10 wholesalers, and manufacturers.

11 This bill would allow for fees, licensing,
12 distribution, and sale of wine by a farm winery.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

17
18 To amend Sections 28-3-1, 28-7-13, and 28-7-18, Code
19 of Alabama 1975, to provide further for the licensing of farm
20 wineries and the sale of wine.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 28-3-1, 28-7-13, and 28-7-18,
23 Code of Alabama 1975, are amended to read as follows:

24 "§28-3-1.

25 "The following words or phrases, whenever they
26 appear in this chapter, and in Alcoholic Beverage Licensing
27 Code, being Act No. 80-529, Acts of Alabama, 1980, as amended,

1 appearing as Chapter 3A, Title 28, as amended, and the Alabama
2 Table Wine Act, being Act 80-382, Acts of Alabama 1980, as
3 amended, appearing as Chapter 7, Title 28, as amended, unless
4 the context clearly indicates otherwise, shall have the
5 meaning ascribed to them in this section:

6 "(1) ALCOHOLIC BEVERAGES. Any alcoholic, spirituous,
7 vinous, fermented, or other alcoholic beverage, or combination
8 of liquors and mixed liquor, a part of which is spirituous,
9 vinous, fermented, or otherwise alcoholic, and all drinks or
10 drinkable liquids, preparations or mixtures intended for
11 beverage purposes, which contain one-half of one percent or
12 more of alcohol by volume, and shall include liquor, beer, and
13 wine.

14 "(2) ASSOCIATION. A partnership, limited
15 partnership, or any form of unincorporated enterprise owned by
16 two or more persons.

17 "(3) BEER, or MALT OR BREWED BEVERAGES. Except as
18 otherwise provided in this subdivision, any beer, lager beer,
19 ale, porter, malt or brewed beverage, or similar fermented
20 malt liquor containing one-half of one percent or more of
21 alcohol by volume and not in excess of thirteen and
22 nine-tenths percent by volume, by whatever name the same may
23 be called.

24 "(4) BOARD. The Alcoholic Beverage Control Board.

25 "(5) CARTON. The package or container or containers
26 in which alcoholic beverages are originally packaged for

1 shipment to market by the manufacturer or its designated
2 representatives or the importer.

3 "(6) CONTAINER. The single bottle, can, keg, bag, or
4 other receptacle, not a carton, in which alcoholic beverages
5 are originally packaged for the market by the manufacturer or
6 importer and from which the alcoholic beverage is consumed by
7 or dispensed to the public.

8 "(7) CLUB.

9 "a. Class I. A corporation or association organized
10 or formed in good faith by authority of law and which must
11 have at least 150 paid-up members. It must be the owner,
12 lessee, or occupant of an establishment operated solely for
13 the objects of a national, social, patriotic, political, or
14 athletic nature or the like, but not for pecuniary gain, and
15 the property as well as the advantages of which, belong to all
16 the members and which maintains an establishment provided with
17 special space and accommodations where, in consideration of
18 payment, food with or without lodging is habitually served.
19 The club shall hold regular meetings, continue its business
20 through officers regularly elected, admit members by written
21 application, investigation, and ballot and charge and collect
22 dues from elected members.

23 "b. Class II. A corporation or association organized
24 or formed in good faith by authority of law and which must
25 have at least 100 paid-up members. It must be the owner,
26 lessee, or occupant of an establishment operated solely for
27 the objects of a national, social, patriotic, political, or

1 athletic nature or the like. The club shall hold regular
2 meetings, continue its business through officers regularly
3 elected, admit members by written application, investigation
4 and ballot and charge and collect dues from elected members.

5 "(8) CORPORATION. A corporation or joint stock
6 association organized under the laws of this state, the United
7 States, or any other state, territory or foreign country, or
8 dependency.

9 "(9) DRY COUNTY. Any county which by a majority of
10 those voting voted in the negative in an election heretofore
11 held under the applicable statutes at the time of the election
12 or may hereafter vote in the negative in an election or
13 special method referendum hereafter held in accordance with
14 the provisions of Chapter 2 of this title, or held in
15 accordance with the provisions of any act hereafter enacted
16 permitting such election.

17 "(10) DRY MUNICIPALITY. Any municipality within a
18 wet county which has, by its governing body or by a majority
19 of those voting in a municipal election heretofore held in
20 accordance with the provisions of Section 28-2-22, or in a
21 municipal option election heretofore or hereafter held in
22 accordance with the provisions of Act 84-408, Acts of Alabama
23 1984, appearing as Chapter 2A of this title, or any act
24 hereafter enacted permitting municipal option election, voted
25 to exclude the sale of alcoholic beverages within the
26 corporate limits of the municipality.

1 "(11) FARM WINERY. A limited manufacturer producing
2 not more than 250,000 gallons of wine annually from all
3 manufacturing facilities under its control.

4 "~~(11)~~(12) GENERAL WELFARE PURPOSES.

5 "a. The administration of public assistance as set
6 out in Sections 38-2-5 and 38-4-1;

7 "b. Services, including supplementation and
8 supplementary services under the federal Social Security Act,
9 to or on behalf of persons to whom such public assistance may
10 be given under Sections 38-2-5 and 38-4-1;

11 "c. Service to and on behalf of dependent, neglected
12 or delinquent children; and

13 "d. Investigative and referral services to and on
14 behalf of needy persons.

15 "~~(12)~~(13) HEARING COMMISSION. A body appointed by
16 the board to hear and decide all contested license
17 applications and all disciplinary charges against any licensee
18 for violation of this title or the regulations of the board.

19 "~~(13)~~(14) HOTEL. A building or buildings held out to
20 the public for housing accommodations of travelers or
21 transients, and shall include motel, but shall not include a
22 rooming house or boarding house.

23 "~~(14)~~(15) IMPORTER. Any person, association or
24 corporation engaged in importing alcoholic beverages, liquor,
25 wine, or beer, manufactured outside of the United States of
26 America into this state or for sale or distribution in this
27 state, or to the board or to a licensee of the board.

1 "~~(15)~~(16) LIQUOR. Any alcoholic, spirituous, vinous,
2 fermented, or other alcoholic beverage, or combination of
3 liquors and mixed liquor, a part of which is spirituous,
4 fermented, vinous or otherwise alcoholic, and all drinks or
5 drinkable liquids, preparations or mixtures intended for
6 beverage purposes, which contain one-half of one percent or
7 more of alcohol by volume, except beer and table wine.

8 "~~(16)~~(17) LIQUOR STORE. A liquor store operated by
9 the board, where alcoholic beverages other than beer are
10 authorized to be sold in unopened containers.

11 "~~(17)~~(18) MANUFACTURER. Any person, association, or
12 corporation engaged in the producing, bottling, manufacturing,
13 distilling, rectifying, or compounding of alcoholic beverages,
14 liquor, beer, or wine in this state or for sale or
15 distribution in this state or to the board or to a licensee of
16 the board.

17 "~~(18)~~(19) MINOR. Any person under 21 years of age,
18 except a person 19 years of age or older prior to October 1,
19 1985, is not a minor; provided, however, in the event Section
20 28-1-5, shall be repealed or otherwise shall be no longer in
21 effect, thereafter the provisions of Section 26-1-1, shall
22 govern.

23 "~~(19)~~(20) MUNICIPALITY. Any incorporated city or
24 town of this state to include its police jurisdiction.

25 "~~(20)~~(21) PERSON. Every natural person, association,
26 or corporation. Whenever used in a clause prescribing or
27 imposing a fine or imprisonment, or both, such term as applied

1 to association shall mean the partners or members thereof and
2 as applied to corporation shall mean the officers thereof,
3 except as to incorporated clubs the term person shall mean
4 such individual or individuals who, under the bylaws of such
5 clubs, shall have jurisdiction over the possession and sale of
6 liquor therein.

7 "~~(21)~~(22) POPULATION. The population according to
8 the last preceding or any subsequent decennial census of the
9 United States, except where a municipality is incorporated
10 subsequent to the last census, in which event, its population
11 until the next decennial census shall be the population of the
12 municipality as determined by the judge of probate of the
13 county as the official population on the date of its
14 incorporation.

15 "~~(22)~~(23) RESTAURANT. A reputable place licensed as
16 a restaurant, operated by a responsible person of good
17 reputation and habitually and principally used for the purpose
18 of preparing and serving meals for the public to consume on
19 the premises.

20 "~~(23)~~(24) MEAL. A diversified selection of food some
21 of which is not susceptible of being consumed in the absence
22 of at least some articles of tableware and which cannot be
23 conveniently consumed while one is standing or walking about.

24 "~~(24)~~(25) RETAILER. Any person licensed by the board
25 to engage in the retail sale of any alcoholic beverages to the
26 consumer.

1 "~~(25)~~(26) SALE or SELL. Any transfer of liquor, wine
2 or beer for a consideration, and any gift in connection with,
3 or as a part of, a transfer of property other than liquor,
4 wine or beer for a consideration.

5 "~~(26)~~(27) SELLING PRICE. The total marked-up price
6 of spirituous or vinous liquors sold by the board, exclusive
7 of taxes levied thereon.

8 "~~(27)~~(28) UNOPENED CONTAINER. A container containing
9 alcoholic beverages, which has not been opened or unsealed
10 subsequent to filling and sealing by the manufacturer or
11 importer.

12 "~~(28)~~(29) WET COUNTY. Any county which by a majority
13 of those voting voted in the affirmative in an election
14 heretofore held in accordance with the statutes applicable at
15 the time of the election or may hereafter vote in the
16 affirmative in an election or special method referendum held
17 in accordance with the provisions of Chapter 2 of this title,
18 or other statutes applicable at the time of the election.

19 "~~(29)~~(30) WET MUNICIPALITY. Any municipality in a
20 dry county which by a majority of those voting voted in the
21 affirmative in a municipal option election heretofore or
22 hereafter held in accordance with the provisions of Act
23 84-408, Acts of Alabama 1984, appearing as Chapter 2A of this
24 title, as amended, or any act hereafter enacted permitting
25 municipal option election, or any municipality which became
26 wet by vote of the governing body or by the voters of the
27 municipality heretofore or hereafter held under the special

1 method referendum provisions of Section 28-2-22, or as
2 hereafter provided, where the county has become dry subsequent
3 to the elected wet status of the municipality.

4 "~~(30)~~(31) WHOLESALER. Any person licensed by the
5 board to engage in the sale and distribution of table wine and
6 beer, or either of them, within this state, at wholesale only,
7 to be sold by export or to retail licensees or other wholesale
8 licensees or others within this state lawfully authorized to
9 sell table wine and beer, or either of them, for the purpose
10 of resale only.

11 "~~(31)~~(32) WINE. All beverages made from the
12 fermentation of fruits, berries, or grapes, with or without
13 added spirits, and produced in accordance with the laws and
14 regulations of the United States, containing not more than 24
15 percent alcohol by volume, and shall include all sparkling
16 wines, carbonated wines, special natural wines, rectified
17 wines, vermouths, vinous beverages, vinous liquors, and like
18 products, including restored or unrestored pure condensed
19 juice.

20 "~~(32)~~(33) TABLE WINE. Except as otherwise provided
21 in this subdivision, any wine containing not more than 24
22 percent alcohol by volume. Table wine does not include any
23 wine containing more than sixteen and one-half percent alcohol
24 by volume that is made with herbs or flavors, except vermouth,
25 or is an imitation or other than standard wine. Table wine is
26 not liquor, spirituous, or vinous.

1 "~~(33)~~(34) BRANDY. All beverages which are an
2 alcoholic distillate from the fermented juice, mash, or wine
3 of fruit, or from the residue thereof, produced in such manner
4 that the distillate possesses the taste, aroma, and
5 characteristics generally attributed to the beverage, as
6 bottled at not less than 80 degree proof.

7 "§28-7-13.

8 "(a) License fees for licenses issued by the board.
9 The following annual license fees are levied and prescribed
10 for licenses issued and renewed by the board pursuant to the
11 authority contained in this chapter:

12 "(1) Wine retailer's license, license fee of
13 \$150.00.

14 "(2) Wine wholesaler's license, license fee of
15 \$550.00.

16 "(3) Wine importer's license, license fee of
17 \$500.00.

18 "(4) Wine manufacturer's license, license fee of
19 \$500.00.

20 "(5) Farm winery license, license fee of \$150.00.

21 "In addition, the county or municipality therein in which the
22 manufacturer, farm winery, wholesaler, importer or retailer
23 sells or distributes table wine may fix a reasonable privilege
24 or license tax on a wine manufacturer, farm winery,
25 wholesaler, importer or retailer located therein, conditioned
26 on a permit or license being issued by the board. Provided,
27 however, said county or municipality shall levy no license or

1 privilege tax, or other charge for the privilege of doing
2 business as a wine manufacturer, farm winery, wholesaler,
3 importer or retailer, which shall exceed one-half the amount
4 of the state license fee levied under the provisions of this
5 section for like privilege.

6 "(b) Payment, collection and administration. All
7 license and filing fees levied or authorized by this chapter,
8 other than those levied by a municipality, shall be paid to
9 the board. All filing and license fees paid to the board shall
10 be paid into the State Treasury to the credit of the Beer Tax
11 and License Fund of the board and each month's receipts shall
12 be distributed to the State General Fund no later than the end
13 of the following month. All license fees levied by any county
14 and paid the board shall be paid not later than the last day
15 of the month following the month of collection to the county
16 governing body which shall distribute the proceeds thereof.

17 "§28-7-18.

18 "(a) (1) No manufacturer shall sell any table wine
19 direct to any retailer or for consumption on the premises
20 where sold, nor sell or deliver any such table wine in other
21 than original containers, nor shall any manufacturer maintain
22 or operate within this state any place or places, other than
23 the place or places covered by his or its license where table
24 wine is sold or where orders therefor are taken.

25 "(2) Provided, further, that table wine which is
26 manufactured in Alabama may be sold directly at retail by the

1 licensed manufacturer only on the manufacturer's premises, for
2 on-premise or off-premise consumption.

3 "(3) Provided, further, that a manufacturer holding
4 a federal bonded winery license and producing less than
5 250,000 gallons of table wine annually under that license
6 shall qualify for a farm winery license.

7 "(4) Provided, further, that a farm winery license
8 holder that is located in the state:

9 "a. Shall apply to the board for approval and obtain
10 licenses for two additional farm winery locations apart from
11 the primary license location where wine is manufactured, and
12 shall be licensed for all premise activities allowed in this
13 section without being required to manufacture or bottle wine.

14 "b. May purchase at wholesale other tax paid table
15 wine and beer for on-premises consumption only at farm winery
16 premises of this subsection.

17 "c. May purchase, transport, or receive brandy or
18 distill brandy from wine to be used only to fortify wine up to
19 24 percent alcohol by volume as allowed by the laws of the
20 United States.

21 "d. May sell, transport, and deliver table wine
22 outside of the State of Alabama as allowed by the laws of
23 other states.

24 "(5) Provided, further, that a farm winery license
25 holder in this state:

1 "a. May sell and deliver up to 50,000 gallons of
2 fermented table wine to all on-premises and off-premises wine
3 licensees of the board.

4 "b. May sell and dispense samples of fermented table
5 wine annually at no more than five off-premises events,
6 including farmers markets or other municipal licensed events
7 each lasting no longer than five consecutive days or a total
8 of 30 days. Prior to participating at any event, a farm winery
9 must file with the board a single calendar listing of all
10 events and associated state or municipal documentation as may
11 be required by the board and while at the event, the farm
12 winery shall display at all times the farm winery license.

13 "c. May sell, on the premises, fermented table wine
14 produced at the winery by the bottle or by the case to
15 licensed retailers, including all table wine licensees of the
16 board.

17 "d. "Fermented table wine" as used in this
18 subdivision is any bottled wine so labeled as being "Produced
19 and Bottled by" the farm winery, as allowed by the U.S.
20 Federal Government.

21 (b) (1) There is hereby levied and assessed, upon
22 wine manufactured in Alabama and sold by the manufacturer
23 directly at retail on the premises where it is manufactured,
24 as provided in subsection (a), or dispensed, as free samples
25 of not more than six ounces, in the tasting room or wine
26 cellar on the manufacturer's premises, an excise tax, measured
27 by and graduated in accordance with the volume of ~~such~~ the

1 wine sold or dispensed, in an amount equal to forty-five cents
2 (\$.45) per liter.

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

8 "(3) There is hereby levied and assessed, upon wine
9 manufactured by a farm winery and sold by the farm winery as
10 provided in subsection (a), or dispensed as free samples of
11 not more than six ounces in this state, an excise tax,
12 measured by and graduated in accordance with the volume of
13 such wine sold or dispensed, in an amount equal to forty-five
14 cents (\$.45) per liter.

15 "(4) The tax hereby levied and assessed on wine
16 sales to licensed retailers by a farm winery or to consumers
17 from the premises of the farm winery shall be added to the
18 sales price of all wine sold and collected from the purchaser.

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

21 "(1) Not later than the fifteenth day of the month
22 following the month in which table wine was dispensed as free
23 samples or sold at retail as provided in subsection (a), the
24 manufacturer shall file with the board, on a form and in the
25 manner prescribed by the board, a return showing taxes due at
26 thirty-eight cents (\$.38) per liter of the table wine
27 dispensed or sold at retail during the previous month; the

1 taxes due at such rate shall be remitted to the board along
2 with the return.

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

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

18 "(d) Manufacturers who manufacture table wine within
19 Alabama shall provide to the board monthly reports, in the
20 form, time, and manner prescribed by the board, reporting
21 gallonage sold and gallonage exported for sale outside the
22 state during the previous month.

23 "(e) (1) The tax herein levied is exclusive and shall
24 be in lieu of all other and additional taxes of the state,
25 county, and municipality imposed on or measured by the sale or
26 volume of sale of table wine; provided that nothing herein
27 contained shall be construed to exempt the retail sale of

1 table wine from the levy of tax on general retail sales by the
2 state, county, or municipality in the nature of, or in lieu
3 of, a general sales tax.

4 "(2) No excise or liter tax shall be due from the
5 farm winery table wine sold to any wholesale license holder or
6 exported by a manufacturer.

7 "(3) Table wine manufactured in Alabama shall be
8 subject to tax as may be described by Section 28-7-16.

9 "(4) The terms "fermented table wine" or "produced
10 and bottled by" table wine as used in this section shall
11 conform to the prevailing definition of the United States
12 federal government, including fermented table wine content and
13 as further indicated by the table wine label.

14 "(f) A manufacturer as described in this section
15 shall include farm winery license holders.

16 "(g) Upon the effective date of the act amending
17 this section, a current holder of a wine manufacture's license
18 that has not produced more than the maximum number of gallons
19 of wine allowed to a farm winery during the previous year
20 shall have the option, during the annual license renewal
21 period, to renew as a farm winery license holder without
22 reapplication to the board. "

23 Section 2. This act shall become effective on the
24 first day of the third month following its passage and
25 approval by the Governor, or its otherwise becoming law.