

1 HB637
2 119017-1
3 By Representative Morrow
4 RFD: Tourism and Travel
5 First Read: 25-FEB-10

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8 SYNOPSIS: This bill would provide for the Alabama
9 Small Winery Business Viability Act to facilitate
10 the operations of Alabama small wineries as small
11 businesses and to update operational law relating
12 to the sale and distribution of wine, wine tasting
13 events, and wine production among small wineries.

14 The bill would allow small wineries to sell
15 directly to retailers up to 24,000 gallons per year
16 and allow small wineries to produce bottled wine
17 for other small wineries.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT

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23 To provide for the Alabama Small Winery Business
24 Viability Act; to facilitate the operations of small wineries
25 by updating the laws regarding the sale and distribution of
26 bottled wine of small wineries; to provide for the direct sale
27 of small wineries wine to retailers of a certain amount of

1 wine annually; to allow direct sale to wine retailers; to
2 provide for wine tasting events and Sunday sales in areas in
3 which Sunday sales are otherwise legal; to provide for small
4 wineries to operate in the same manner as wholesalers of wine;
5 and to amend Section 28-7-18, Code of Alabama 1975, for
6 conformity to the act.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. (a) This act shall be known as the
9 Alabama Small Winery Business Viability Act.

10 (b) As used in this act, the following terms shall
11 have the following meanings:

12 (1) AFFILIATE. Any person controlling, controlled
13 by, or under common control with an Alabama small winery.

14 (2) ALABAMA SMALL WINERY. A small winery which is
15 licensed by the Alcoholic Beverage Control Board to
16 manufacture wine in Alabama and which includes the following:

17 a. At least one tasting room at the winery and may
18 include five additional tasting rooms throughout the state.

19 b. A common federally bonded or designated area for
20 in process storage of bottled wine, labeled or unlabeled, and
21 receipt, transfer, and storage of bonded winemaking materials
22 in accordance with the laws and regulations of the United
23 States.

24 c. A manufacturing facility for the fermentation,
25 aging, blending, and processing of wine in accordance with the
26 laws and regulations of the United States.

1 d. Preparation of wine for market in original
2 containers for distribution in accordance with the laws and
3 regulations of the United States.

4 (3) BOARD. The Alabama Alcoholic Beverage Control
5 Board.

6 (4) COMMISSIONER. The Commissioner of the Alcoholic
7 Beverage Control Board.

8 (5) SMALL WINERY. A winery which manufactures less
9 than 75,000 gallons of wine annually in the state where the
10 winery is located.

11 (6) TASTING ROOM. An enclosed permanent outlet for
12 the promotion of a small winery's wine by providing samples of
13 such wine to the public and for the sale of such wine at
14 retail for consumption on the premises and for sale in closed
15 packages for consumption off the premises.

16 (7) WINE. All beverages made from the fermentation
17 of fruits, berries, or grapes, juices or concentrates with or
18 without added spirits, and produced in accordance with the
19 laws and regulations of the United States, containing not more
20 than 24 percent alcohol by volume, and shall include all
21 sparkling wines, carbonated wines, special natural wines,
22 rectified wines, vermouths, vinous beverages, vinous liquors,
23 and like products.

24 Section 2. (a) The board shall authorize any
25 licensed small winery to sell up to 24,000 gallons per
26 calendar year of its wine as prepared in original containers
27 at wholesale within the state, with the following provisions:

1 (1) A licensed small winery shall have first offered
2 its products to a licensed Alabama wholesaler without
3 acceptance in 45 days; or

4 (2) A licensed Alabama wholesaler abandons an
5 existing small winery distribution agreement as shown by
6 invoice nonpayment or de minimis sales activity of less than
7 2,400 gallons within 120 days.

8 (b) A small winery wholesale licensee shall be
9 regulated in the transport, sales, and record keeping as
10 governed by the Alabama laws for wholesalers.

11 (c) A small winery licensee shall be authorized to
12 sell, deliver, or ship its wine in bulk or in bottles, whether
13 labeled or unlabeled in-bond and as provided by the laws and
14 regulations of the United States, to other small winery
15 licensees and shall be authorized to acquire and receive
16 deliveries and shipments of such wine made by other small
17 winery licensees.

18 (d) An Alabama small winery licensee shall be
19 authorized, in accordance with rules of the board, to acquire
20 and receive in-bond deliveries and shipments of in-process
21 winemaking materials in accordance with the laws and
22 regulations of the United States.

23 (e) The annual small winery license tax for each
24 license issued shall be five hundred dollars (\$500).

25 Section 3. (a) The board shall authorize any small
26 winery licensee to receive in original containers and to sell

1 the wine of any other small winery licensee for on-premises
2 consumption and off-premises consumption.

3 (b) The board may authorize any small winery
4 licensee to purchase at wholesale distilled spirits, malt
5 beverages, and wines not produced by a winery for consumption
6 in its tasting rooms and at facilities located on the premises
7 of the winery or on property located contiguous to the winery
8 and owned by the winery.

9 (c) No excise tax shall be collected for the wine
10 served in a small winery tasting room. An excise tax of
11 forty-five cents (\$.45) per liter shall be paid by the
12 wholesaler or by the originating small winery.

13 Section 4. (a) An Alabama small winery licensee, in
14 accordance with rules of the board, may be further licensed to
15 acquire and receive deliveries and shipments of wine in bulk
16 from out-of-state producers and shippers in an amount not to
17 exceed 20 percent of its annual production, provided that the
18 Alabama small winery licensee receiving any such shipment or
19 shipments files timely reports with the board and keeps
20 records of the receipt of such shipment or shipments as may be
21 required by the board.

22 (b) Any wine received in bulk pursuant to subsection
23 (a) shall have levied thereon the required taxes which shall
24 be reported and remitted to the board.

25 (c) The annual license tax for each license issued
26 pursuant to this section to acquire and receive bulk wine
27 shipments from out of state shall be fifty dollars (\$50).

1 Section 5. (a) (1) Notwithstanding any other
2 provision of Title 28 to the contrary, in all counties or
3 municipalities in which the sale of wine is lawful, the
4 commissioner may authorize any Alabama small winery licensee
5 to sell its wine and the wine of any other small winery
6 licensee for consumption on the premises at facilities located
7 on the premises of the winery or on property located
8 contiguous to the winery and owned by the winery or by an
9 affiliate of the winery.

10 (2) Notwithstanding any other provisions of Title 28
11 to the contrary, in all counties or municipalities in which
12 the sale of distilled spirits, malt beverages, and wines is
13 lawful, the commissioner may authorize such licensee to make
14 sales of distilled spirits, malt beverages, and wines not
15 produced by a small winery for consumption in its tasting
16 rooms and at facilities located on the premises of the winery
17 or on property located contiguous to the winery and owned by
18 the winery or by an affiliate of the winery, provided that any
19 alcoholic beverages sold pursuant to this subdivision shall be
20 purchased by the winery from a licensed wholesaler at
21 wholesale prices.

22 (b) Notwithstanding any other provision of Title 28
23 to the contrary, in all counties and municipalities in which
24 the sale of wine is lawful by an Alabama small winery, an
25 Alabama small winery which is licensed to sell its wine in a
26 tasting room or other licensed small winery facility within
27 the county or municipality, as the case may be, for

1 consumption on the premises or in closed packages for
2 consumption off the premises, shall be authorized to sell its
3 wine and the wine of any other Alabama small winery licensee
4 on Sundays from 12:30 P.M. until 12:00 midnight in the tasting
5 room or other licensed winery facility to the same extent as
6 its county or municipal license would otherwise permit.
7 Nothing in this section shall be construed to authorize a
8 small winery to sell wine on any other premises which are not
9 actually located on the property of the small winery, except
10 in special entertainment districts designated by the local
11 governing authority of the county or municipality, as
12 applicable.

13 Section 6. Section 28-7-18, Code of Alabama 1975, is
14 amended to read as follows:

15 "§28-7-18.

16 "(a) ~~No~~ Except as provided in the Alabama Small
17 Winery Act, no manufacturer shall sell any table wine direct
18 to any retailer or for consumption on the premises where sold,
19 nor sell or deliver any such table wine in other than original
20 containers, nor shall any manufacturer maintain or operate
21 within this state any place or places, other than the place or
22 places covered by his or its license where table wine is sold
23 or where orders therefor are taken. Provided, further, that
24 table wine which is manufactured in Alabama may be sold
25 directly at retail by the licensed manufacturer only on the
26 manufacturer's premises, for on-premise or off-premise
27 consumption. Wine produced at an Alabama small winery may be

1 sold directly to retail wine licensees as authorized by the
2 Alabama Small Winery Act.

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

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

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

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

1 "(2) 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 municipality within which the
5 table wine was dispensed or sold at retail within its
6 corporate limits, or, where dispensed or sold at retail
7 outside of the corporate limits of any municipality, with the
8 county within which the table wine was dispensed or sold at
9 retail, a return showing taxes at seven cents (\$.07) per liter
10 of the table wine dispensed or sold at retail during the
11 previous month; the taxes due at such rate shall be remitted
12 to the county or municipality along with the return.

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

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

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

1 state, county, or municipality in the nature of, or in lieu
2 of, a general sales tax."

3 Section 7. To the extent that any conflict exists
4 between this act and the current provisions of Title 28, Code
5 of Alabama 1975, or administrative rules of the Alcoholic
6 Beverage Control Board, the provisions of this act shall
7 supersede any existing conflicting statutes or administrative
8 rules.

9 Section 8. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.