

1 HB494
2 199664-1
3 By Representative Nordgren
4 RFD: Economic Development and Tourism
5 First Read: 23-APR-19

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8 SYNOPSIS: Under existing law, breweries and brewpubs
9 are subject to a privilege or excise tax on beer
10 dispensed for retail sale.

11 This bill would provide that the privilege
12 or excise tax on beer is levied at the time the
13 beer is allocated by the brewery or brewpub for the
14 purpose of retail sale before being dispensed for
15 consumption.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT

20
21 Relating to alcoholic beverages; to amend Sections
22 28-3A-6, as last amended by Act 2018-447, 2018 Regular
23 Session, and 28-4A-4, Code of Alabama 1975; to provide that
24 the privilege or excise tax on beer is levied at the time the
25 beer is allocated by the brewery or brewpub for the purpose of
26 retail sale before being dispensed for consumption.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 28-3A-6, as last amended by Act
2 2018-447, 2018 Regular Session, and 28-4A-4, Code of Alabama
3 1975, are amended to read as follows:

4 "§28-3A-6.

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

18 "(b) No manufacturer licensee shall sell any
19 alcoholic beverages direct to any retailer or for consumption
20 on the premises where sold except as specified under
21 subsection (h), nor sell or deliver any such alcoholic
22 beverages in other than original containers approved as to
23 capacity by the board and in accordance with standards of fill
24 prescribed by the U. S. Treasury Department, nor maintain or
25 operate within the state any place or places, other than the
26 place or places covered by the manufacturer license, where
27 alcoholic beverages are sold or where orders are taken.

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

12 "(d) All such manufacturer licensees shall be
13 required to mail to the board prior to the twentieth day of
14 each month a consolidated report of all shipments of alcoholic
15 beverages made to each wholesaler during the preceding month.
16 Such reports shall be in such form and containing such
17 information as the board may prescribe.

18 "(e) Every manufacturer shall keep at its principal
19 place of business within the state, daily permanent records
20 which shall show the quantities of raw materials received and
21 used in the manufacture of alcoholic beverages, and the
22 quantities of alcoholic beverages manufactured and stored, the
23 sale of alcoholic beverages, the quantities of alcoholic
24 beverages stored for hire or transported for hire by or for
25 the licensee and the names and addresses of the purchasers or
26 other recipients thereof.

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

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

19 "(h) (1) A manufacturer licensee actively and
20 continuously engaged in the manufacture of alcoholic beverages
21 on the manufacturer's licensed premises in the state may
22 conduct tastings or samplings on the licensed premises, as
23 regulated by the board except as to quantity and hours of
24 operation, or as otherwise provided by statute, and for that
25 purpose give away or sell alcoholic beverages manufactured
26 there for consumption on only one premises where manufactured.
27 All alcoholic beverages manufactured and retained on the

1 manufacturer's licensed premises for tasting or sampling shall
2 remain on the premises and be dispensed from a barrel or keg
3 or other original containers.

4 "(2) Notwithstanding subdivision (1), a manufacturer
5 licensee engaged in the manufacture of less than 60,000
6 barrels of beer per year may sell at retail on its licensed
7 premises in the state, for off-premises consumption, beer
8 produced at that licensed premises; provided, however, beer
9 sold for off-premises consumption: May not exceed 288 ounces
10 per customer per day; may not be produced pursuant to a
11 contract with another manufacturer; and shall be sealed,
12 labeled, packaged, and taxed in accordance with state and
13 federal laws and regulations. For purposes of this
14 subdivision, beer produced by a parent, subsidiary, or
15 affiliate of the licensee, or by a contract brewery,
16 regardless of where the beer is produced, shall be included
17 for purposes of calculating the 60,000 barrel limit.

18 "(3) A manufacturer licensee engaged in the
19 manufacture of liquor on the manufacturer's licensed premises
20 in the state may sell at retail on its licensed premises, for
21 off-premises consumption, liquor manufactured at that licensed
22 premises; provided, however, liquor sold for off-premises
23 consumption may not exceed 2.25 liters per customer per day
24 and shall be sealed, labeled, packaged, and taxed in
25 accordance with state and federal laws and regulations. The
26 manufacturer licensee shall keep and maintain records for
27 three years of all sales for off-premises consumption.

1 "(4) Notwithstanding subdivision (1), the board may
2 grant a permit allowing a manufacturer licensee engaged in the
3 manufacture of less than 50,000 gallons of table wine per year
4 in the state to establish and operate one additional off-site
5 tasting room to be used to conduct tastings or samplings and
6 to sell at retail the licensee's table wine. The board may
7 also grant a single permit allowing an association
8 representing the majority of wineries and grape growers in the
9 state to establish and operate one off-site tasting room to be
10 used to conduct tastings and samplings and to sell at retail
11 table wines produced by wine manufacturer licensees in the
12 state. An applicant for an off-site tasting room permit shall
13 file a written application with the board in such form and
14 containing such information as the board may prescribe, along
15 with proof of consent and approval from the appropriate
16 governing authority in which the off-site tasting room is to
17 be located and a filing fee of fifty dollars (\$50). All state
18 and federal laws and regulations applicable to on-site tasting
19 rooms shall apply to an off-site tasting room. Wine sold at an
20 off-site tasting room for off-premises consumption may not
21 exceed one case of wine per customer per day. For purposes of
22 this subdivision, one case of wine means the equivalent of
23 twelve 750-milliliter bottles of wine.

24 "(i) (1) In addition to the licenses provided for by
25 Chapter 3A of this title, and any county or municipal license,
26 there is levied on the manufacturer of the alcoholic beverages
27 dispensed on the premises the privilege or excise tax imposed

1 on beer by Sections 28-3-184 and 28-3-190; and imposed on
2 table wine by Section 28-7-18; and imposed on liquor by
3 Sections 28-3-200 to 28-3-205, inclusive. Taxes on beer shall
4 be levied at the time the beer is allocated by the beer
5 manufacturer for the purpose of retail sale and not at the
6 time the beer is dispensed for consumption. Every manufacturer
7 licensee shall file the tax returns, pay the taxes, and
8 perform all obligations imposed on wholesalers at the times
9 and places set forth therein. It shall be unlawful for any
10 manufacturer licensee who is required to pay the taxes so
11 imposed in the first instance to fail or refuse to add to the
12 sale price and collect from the purchaser the required amount
13 of tax, it being the intent and purpose of this provision that
14 each of the taxes levied is in fact a tax on the consumer,
15 with the manufacturer licensee who pays the tax in the first
16 instance acting merely as an agent of the state for the
17 collection and payment of the tax levied by Section 28-3-184;
18 as an agent for the county or municipality for the collection
19 and payment of the tax levied by Section 28-3-190; as an agent
20 for the county or municipality for collection and payment of
21 the tax levied by Section 28-7-18; and as an agent for the
22 state for collection and payment of the tax levied by Sections
23 28-3-200 to 28-3-205, inclusive.

24 "(2) The manufacturer licensee shall keep and
25 maintain all records required to be kept and maintained by
26 manufacturer, wholesaler, and retailer licensees for the tax
27 so levied except that manufacturers are not required to

1 maintain name, address, or other personal demographic
2 information for sales as provided in subsection (h).

3 "(j) A manufacturer licensee engaged in the
4 manufacture of beer in the state may donate and deliver up to
5 31 gallons of the manufacturer's beer to a licensed nonprofit
6 special event operated by or on behalf of a nonprofit
7 organization. Donations shall be taxed in accordance with
8 state and federal laws and regulations. Any beer remaining at
9 the conclusion of the nonprofit event shall be returned to the
10 manufacturer for disposal.

11 "(k) A manufacturer licensee engaged in the
12 manufacture of table wine in the state may donate and deliver
13 up to two cases of the manufacturer's table wine to a licensed
14 nonprofit special event operated by or on behalf of a
15 nonprofit organization. Donations shall be taxed in accordance
16 with state and federal laws and regulations. Any table wine
17 remaining at the conclusion of the nonprofit event shall be
18 returned to the manufacturer for disposal.

19 "§28-4A-4.

20 "(a) In addition to the licenses provided for by
21 this chapter and any county or municipal license, there is
22 levied on the brewpub for on-premises sales of beer brewed by
23 the brewpub licensee the privilege or excise taxes imposed by
24 Sections 28-3-184 and 28-3-190. Every brewpub licensee shall
25 file the tax returns, pay the taxes and perform all
26 obligations imposed on wholesalers at the times and places set
27 forth therein. It shall be unlawful for any brewpub licensee

1 who is required to pay the taxes so imposed in the first
2 instance to fail or refuse to add to the sales price and
3 collect from the purchaser the required amount of tax, it
4 being the intent and purpose of this provision that each of
5 the taxes levied is in fact a tax on the consumer, with the
6 brewpub licensee who pays the tax in the first instance acting
7 merely as an agent of the state for the collection and payment
8 of the tax levied by Section 28-3-184 and as an agent of the
9 county or municipality for the collection and payment of the
10 tax levied by Section 28-3-190. Taxes on beer shall be levied
11 at the time the beer is allocated for the purpose of retail
12 sale and not at the time the beer is dispensed for
13 consumption.

14 "(b) The brewpub shall be required to keep and
15 maintain all of the records otherwise required to be kept and
16 maintained by manufacturer, wholesaler, and retailer
17 licensees.

18 "(c) The brewpub shall appoint a licensed wholesaler
19 designee in order to preserve Section 28-9-1. In addition, for
20 on-premises sales of beer brewed by the brewpub licensee, the
21 brewpub shall be exempt from Sections 28-9-3 through 28-9-11."

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