

1 HB760
2 141621-1
3 By Representative Hubbard (J)
4 RFD: Economic Development and Tourism
5 First Read: 26-APR-12

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8 SYNOPSIS: Under existing law, licenses and fees are
9 issued and levied by the Alcoholic Beverage Control
10 Board to wine retailers, wholesalers, and
11 manufacturers and a distinction is made between
12 wine and table wine which are defined.

13 This bill would allow for the definition,
14 licensing, fees, distribution, and sale of table
15 wine by farm wineries.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT

20
21 To amend Sections 28-3-1, 28-7-13, 28-7-18, and
22 28-7-22, Code of Alabama 1975, relating to the licensing,
23 fees, distribution, and sale of wine by a farm winery; to
24 provide for the licensing, fees, distribution, and sale of
25 table wine by a farm winery.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 28-3-1, 28-7-13, 28-7-18, and
2 28-7-22, Code of Alabama 1975, are amended to read as follows:

3 "§28-3-1.

4 "The following words or phrases, whenever they
5 appear in this chapter, and in Alcoholic Beverage Licensing
6 Code, being Act No. 80-529, Acts of Alabama, 1980, as amended,
7 appearing as Chapter 3A, Title 28, as amended, and the Alabama
8 Table Wine Act, being Act 80-382, Acts of Alabama 1980, as
9 amended, appearing as Chapter 7, Title 28, as amended, unless
10 the context clearly indicates otherwise, shall have the
11 meaning ascribed to them in this section:

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

20 "(2) ASSOCIATION. A partnership, limited
21 partnership, or any form of unincorporated enterprise owned by
22 two or more persons.

23 "(3) BEER, or MALT OR BREWED BEVERAGES. Except as
24 otherwise provided in this subdivision, any beer, lager beer,
25 ale, porter, malt or brewed beverage, or similar fermented
26 malt liquor containing one-half of one percent or more of
27 alcohol by volume and not in excess of thirteen and

1 nine-tenths percent by volume, by whatever name the same may
2 be called.

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

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

10 "~~(5)~~(6) CARTON. The package or container or
11 containers in which alcoholic beverages are originally
12 packaged for shipment to market by the manufacturer or its
13 designated representatives or the importer.

14 "~~(6)~~(7) CONTAINER. The single bottle, can, keg, bag,
15 or other receptacle, not a carton, in which alcoholic
16 beverages are originally packaged for the market by the
17 manufacturer or importer and from which the alcoholic beverage
18 is consumed by or dispensed to the public.

19 "~~(7)~~(8) CLUB.

20 "a. Class I. A corporation or association organized
21 or formed in good faith by authority of law and which must
22 have at least 150 paid-up members. It must be the owner,
23 lessee, or occupant of an establishment operated solely for
24 the objects of a national, social, patriotic, political, or
25 athletic nature or the like, but not for pecuniary gain, and
26 the property as well as the advantages of which, belong to all
27 the members and which maintains an establishment provided with

1 special space and accommodations where, in consideration of
2 payment, food with or without lodging is habitually served.
3 The club shall hold regular meetings, continue its business
4 through officers regularly elected, admit members by written
5 application, investigation, and ballot and charge and collect
6 dues from elected members.

7 "b. Class II. A corporation or association organized
8 or formed in good faith by authority of law and which must
9 have at least 100 paid-up members. It must be the owner,
10 lessee, or occupant of an establishment operated solely for
11 the objects of a national, social, patriotic, political, or
12 athletic nature or the like. The club shall hold regular
13 meetings, continue its business through officers regularly
14 elected, admit members by written application, investigation
15 and ballot and charge and collect dues from elected members.

16 "~~(8)~~ (9) CORPORATION. A corporation or joint stock
17 association organized under the laws of this state, the United
18 States, or any other state, territory or foreign country, or
19 dependency.

20 "~~(9)~~ (10) DRY COUNTY. Any county which by a majority
21 of those voting voted in the negative in an election
22 heretofore held under the applicable statutes at the time of
23 the election or may hereafter vote in the negative in an
24 election or special method referendum hereafter held in
25 accordance with the provisions of Chapter 2 of this title, or
26 held in accordance with the provisions of any act hereafter
27 enacted permitting such election.

1 "~~(10)~~(11) DRY MUNICIPALITY. Any municipality within
2 a wet county which has, by its governing body or by a majority
3 of those voting in a municipal election heretofore held in
4 accordance with the provisions of Section 28-2-22, or in a
5 municipal option election heretofore or hereafter held in
6 accordance with the provisions of Act 84-408, Acts of Alabama
7 1984, appearing as Chapter 2A of this title, or any act
8 hereafter enacted permitting municipal option election, voted
9 to exclude the sale of alcoholic beverages within the
10 corporate limits of the municipality.

11 "(12) FARM WINERY. A limited manufacturer producing
12 not more than 50,000 gallons of table wine annually from
13 grapes native to and grown in the state in which the
14 manufacturing facility is located, the limited production to
15 be the total production from all manufacturing facilities
16 under its control.

17 "~~(11)~~(13) GENERAL WELFARE PURPOSES.

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

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

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

26 "d. Investigative and referral services to and on
27 behalf of needy persons.

1 "~~(12)~~(14) HEARING COMMISSION. A body appointed by
2 the board to hear and decide all contested license
3 applications and all disciplinary charges against any licensee
4 for violation of this title or the regulations of the board.

5 "~~(13)~~(15) HOTEL. A building or buildings held out to
6 the public for housing accommodations of travelers or
7 transients, and shall include motel, but shall not include a
8 rooming house or boarding house.

9 "~~(14)~~(16) IMPORTER. Any person, association or
10 corporation engaged in importing alcoholic beverages, liquor,
11 wine, or beer, manufactured outside of the United States of
12 America into this state or for sale or distribution in this
13 state, or to the board or to a licensee of the board.

14 "~~(15)~~(17) LIQUOR. Any alcoholic, spirituous, vinous,
15 fermented, or other alcoholic beverage, or combination of
16 liquors and mixed liquor, a part of which is spirituous,
17 fermented, vinous or otherwise alcoholic, and all drinks or
18 drinkable liquids, preparations or mixtures intended for
19 beverage purposes, which contain one-half of one percent or
20 more of alcohol by volume, except beer and table wine.

21 "~~(16)~~(18) LIQUOR STORE. A liquor store operated by
22 the board, where alcoholic beverages other than beer are
23 authorized to be sold in unopened containers.

24 "~~(17)~~(19) MANUFACTURER. Any person, association, or
25 corporation engaged in the producing, bottling, manufacturing,
26 distilling, rectifying, or compounding of alcoholic beverages,
27 liquor, beer, or wine in this state or for sale or

1 distribution in this state or to the board or to a licensee of
2 the board.

3 "~~(18)~~(20) MINOR. Any person under 21 years of age,
4 except a person 19 years of age or older prior to October 1,
5 1985, is not a minor; provided, however, in the event Section
6 28-1-5, shall be repealed or otherwise shall be no longer in
7 effect, thereafter the provisions of Section 26-1-1, shall
8 govern.

9 "~~(19)~~(21) MUNICIPALITY. Any incorporated city or
10 town of this state to include its police jurisdiction.

11 "~~(20)~~(22) PERSON. Every natural person, association,
12 or corporation. Whenever used in a clause prescribing or
13 imposing a fine or imprisonment, or both, such term as applied
14 to association shall mean the partners or members thereof and
15 as applied to corporation shall mean the officers thereof,
16 except as to incorporated clubs the term person shall mean
17 such individual or individuals who, under the bylaws of such
18 clubs, shall have jurisdiction over the possession and sale of
19 liquor therein.

20 "~~(21)~~(23) POPULATION. The population according to
21 the last preceding or any subsequent decennial census of the
22 United States, except where a municipality is incorporated
23 subsequent to the last census, in which event, its population
24 until the next decennial census shall be the population of the
25 municipality as determined by the judge of probate of the
26 county as the official population on the date of its
27 incorporation.

1 "~~(22)~~(24) RESTAURANT. A reputable place licensed as
2 a restaurant, operated by a responsible person of good
3 reputation and habitually and principally used for the purpose
4 of preparing and serving meals for the public to consume on
5 the premises.

6 "~~(23)~~(25) MEAL. A diversified selection of food some
7 of which is not susceptible of being consumed in the absence
8 of at least some articles of tableware and which cannot be
9 conveniently consumed while one is standing or walking about.

10 "~~(24)~~(26) RETAILER. Any person licensed by the board
11 to engage in the retail sale of any alcoholic beverages to the
12 consumer.

13 "~~(25)~~(27) SALE or SELL. Any transfer of liquor, wine
14 or beer for a consideration, and any gift in connection with,
15 or as a part of, a transfer of property other than liquor,
16 wine or beer for a consideration.

17 "~~(26)~~(28) SELLING PRICE. The total marked-up price
18 of spirituous or vinous liquors sold by the board, exclusive
19 of taxes levied thereon.

20 "~~(27)~~(29) UNOPENED CONTAINER. A container containing
21 alcoholic beverages, which has not been opened or unsealed
22 subsequent to filling and sealing by the manufacturer or
23 importer.

24 "~~(28)~~(30) WET COUNTY. Any county which by a majority
25 of those voting voted in the affirmative in an election
26 heretofore held in accordance with the statutes applicable at
27 the time of the election or may hereafter vote in the

1 affirmative in an election or special method referendum held
2 in accordance with the provisions of Chapter 2 of this title,
3 or other statutes applicable at the time of the election.

4 "~~(29)~~(31) WET MUNICIPALITY. Any municipality in a
5 dry county which by a majority of those voting voted in the
6 affirmative in a municipal option election heretofore or
7 hereafter held in accordance with the provisions of Act
8 84-408, Acts of Alabama 1984, appearing as Chapter 2A of this
9 title, as amended, or any act hereafter enacted permitting
10 municipal option election, or any municipality which became
11 wet by vote of the governing body or by the voters of the
12 municipality heretofore or hereafter held under the special
13 method referendum provisions of Section 28-2-22, or as
14 hereafter provided, where the county has become dry subsequent
15 to the elected wet status of the municipality.

16 "~~(30)~~(32) WHOLESALER. Any person licensed by the
17 board to engage in the sale and distribution of table wine and
18 beer, or either of them, within this state, at wholesale only,
19 to be sold by export or to retail licensees or other wholesale
20 licensees or others within this state lawfully authorized to
21 sell table wine and beer, or either of them, for the purpose
22 of resale only.

23 "~~(31)~~(33) WINE. All beverages made from the
24 fermentation of fruits, berries, or grapes, with or without
25 added spirits, and produced in accordance with the laws and
26 regulations of the United States, containing not more than 24
27 percent alcohol by volume, and shall include all sparkling

1 wines, carbonated wines, special natural wines, rectified
2 wines, vermouths, vinous beverages, vinous liquors, and like
3 products, including restored or unrestored pure condensed
4 juice.

5 "~~(32)~~(34) TABLE WINE. Except as otherwise provided
6 in this subdivision, any wine containing not more than 24
7 percent alcohol by volume. Table wine does not include any
8 wine containing more than sixteen and one-half percent alcohol
9 by volume that is made with herbs or flavors, except vermouth,
10 or is an imitation or other than standard wine. Table wine is
11 not liquor, spirituous, or vinous.

12 "\$28-7-13.

13 "(a) License fees for licenses issued by the board.
14 The following annual license fees are levied and prescribed
15 for licenses issued and renewed by the board pursuant to the
16 authority contained in this chapter:

17 "(1) Wine retailer's license, license fee of
18 \$150.00.

19 "(2) Wine wholesaler's license, license fee of
20 \$550.00.

21 "(3) Wine importer's license, license fee of
22 \$500.00.

23 "(4) Wine manufacturer's license, license fee of
24 \$500.00.

25 "(5) Farm winery license, license fee of \$150.

26 "In addition, the county or municipality therein in which the
27 manufacturer, farm winery, wholesaler, importer, or retailer

1 manufacturers, sells, or distributes table wine may fix a
2 reasonable privilege or license tax on a wine manufacturer,
3 farm winery, wholesaler, importer, or retailer located
4 therein, conditioned on a permit or license being issued by
5 the board. Provided, however, said county or municipality
6 shall levy no license or privilege tax, or other charge for
7 the privilege of doing business as a wine wholesaler, importer
8 or retailer, which shall exceed one-half the amount of the
9 state license fee levied under the provisions of this section
10 for like privilege.

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

22 "§28-7-18.

23 "(a) No manufacturer shall sell any table wine
24 direct to any retailer or for consumption on the premises
25 where sold, nor sell or deliver any such table wine in other
26 than original containers, nor shall any manufacturer maintain
27 or operate within this state any place or places, other than

1 the place or places covered by his or its license where table
2 wine is sold or where orders therefor are taken.

3 "(1) Provided, further, that table wine which is
4 manufactured in Alabama, where 75 percent or more of the fruit
5 or produce used in the manufactured wine is grown in Alabama,
6 may be sold directly at retail by the licensed manufacturer
7 only on the manufacturer's premises, for on-premise or
8 off-premise consumption.

9 "(2) Provided further, that table wine which is
10 manufactured by a farm winery licensed in Alabama may be sold
11 directly at retail by the licensed farm winery on the farm
12 winery's licensed manufacturing premises, for on-premises or
13 off-premises consumption.

14 "(3) Provided further, that a farm winery license
15 holder that is located in the state:

16 "a. May sell, transport, and deliver table wine
17 manufactured by it outside of the State of Alabama as allowed
18 by the laws of other states.

19 "b. May sell on the manufacturing premises table
20 wines produced at the farm winery from native grapes, grown in
21 this state, by the bottle or by the case to table wine
22 wholesalers or retailers licensed in this state.

23 "(b) (1) There is hereby levied and assessed, upon
24 wine manufactured in Alabama and sold by the manufacturer
25 directly at retail on the premises where it is manufactured,
26 as provided in subsection (a), or dispensed, as free samples
27 of not more than six ounces, in the tasting room or wine

1 cellar on the manufacturer's premises, an excise tax, measured
2 by and graduated in accordance with the volume of such wine
3 sold or dispensed, in an amount equal to forty-five cents
4 (\$.45) per liter.

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

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

18 "(4) The tax levied and assessed on table wine sales
19 to licensed retailers by a farm winery or to consumers on the
20 premises of the farm winery shall be added to the sales price
21 of all table wines sold and collected from the purchaser.

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

24 "(1) Not later than the fifteenth day of the month
25 following the month in which table wine was dispensed as free
26 samples or sold at retail as provided in subsection (a), the
27 manufacturer shall file with the board, on a form and in the

1 manner prescribed by the board, a return showing taxes due at
2 thirty-eight cents (\$.38) per liter of the table wine
3 dispensed or sold at retail during the previous month; the
4 taxes due at such rate shall be remitted to the board along
5 with the return.

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

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

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

26 "(e) (1) The tax herein levied is exclusive and shall
27 be in lieu of all other and additional taxes of the state,

1 county, and municipality imposed on or measured by the sale or
2 volume of sale of table wine; provided that nothing herein
3 contained shall be construed to exempt the retail sale of
4 table wine from the levy of tax on general retail sales by the
5 state, county, or municipality in the nature of, or in lieu
6 of, a general sales tax.

7 "(2) No excise or liter tax shall be due from the
8 farm winery for the farm winery table wine sold to any
9 licensed wine wholesaler or exported by a farm winery or by a
10 manufacturer.

11 "(3) Table wine manufactured or sold in Alabama
12 shall be subject to taxation as may be prescribed or levied by
13 Section 28-7-16.

14 "§28-7-22.

15 "No manufacturer and no officer or director of any
16 manufacturer shall, at the same time, be a wine wholesaler or
17 retailer, or an officer, director or stockholder or creditor
18 of any wine wholesaler or retailer, nor except as hereinafter
19 provided, be the owner, proprietor or lessor of any place
20 covered directly or indirectly by any wine wholesaler's
21 license or wine retailer's license or other retail license
22 authorizing the sale of wine in this state.

23 "No wine wholesaler and no officer or director of
24 any wine wholesaler shall at the same time be a manufacturer
25 or wine retailer, or be an officer, director, stockholder or
26 creditor of a manufacturer or wine retailer, or be the owner,

1 proprietor or lessor of any place covered by any retail table
2 wine license.

3 "No licensee licensed under this chapter, shall
4 directly or indirectly own any stock of, or have any financial
5 interest in, any other class of business licensed under this
6 chapter.

7 "Excepting as hereinafter provided, no wine
8 manufacturer or wholesaler shall in anywise be interested,
9 either directly or indirectly in the ownership or leasehold of
10 any property, or in any mortgage against the same, for which a
11 liquor or wine retailer's license is granted; nor shall a wine
12 manufacturer or wholesaler either directly or indirectly, lend
13 any moneys, credit or equivalent thereof to any retailer in
14 equipping, fitting out or maintaining and conducting, either
15 in whole or in part, an establishment or business operated
16 under a wine retailer's or liquor retail dispensers' license,
17 excepting only the usual and customary credits allowed for
18 returning packages or containers in which table wine was
19 packed for market by the manufacturer.

20 "Excepting as hereinafter provided, no manufacturer
21 shall in anywise be interested, directly or indirectly, in the
22 ownership or leasehold of any property, or any mortgage lien
23 against the same, for which a wine wholesaler's license is
24 granted, nor shall a manufacturer, either directly or
25 indirectly, lend any moneys, credit or their equivalent to any
26 wine wholesaler in equipping, fitting out, or maintaining and
27 conducting, either in whole or in part, an establishment or

1 business where table wines are licensed for sale by a wine
2 wholesaler, excepting only the usual credits allowed for the
3 return of packages or containers in which table wines were
4 originally packed for the market by the manufacturer.

5 "No wine wholesaler or retailer shall in anywise,
6 either directly or indirectly, receive any credit, loan,
7 moneys or the equivalent thereof from any other licensee, or
8 from or through a subsidiary or affiliate of another licensee
9 or from a firm, association, or corporation, except banking
10 institution in which another licensee or any officer, director
11 or firm member of another licensee has a substantial interest
12 or exercises a control of its business policy for equipping,
13 fitting out, payment of license fee, maintaining and
14 conducting, either in whole or in part, an establishment or
15 business operated under a wine wholesaler's or retailer's
16 license, excepting only the usual and customary credits
17 allowed for the return of packages or containers in which
18 table wines were packed for the market by the manufacturer.

19 "The purpose of this section is to require a
20 separation of the financial and business interest between the
21 various classes of business regulated by this chapter, and no
22 person or corporation shall by any device whatsoever, directly
23 or indirectly, evade the provisions of this section.

24 "It is further provided, however, that no provision
25 of this section shall prohibit family members from operating
26 separate and distinct classes of businesses as provided for in
27 this section."

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