

1 HB176
2 172929-5
3 By Representatives Daniels, Martin, Williams (JD), Lindsey,
4 Melton, Holmes (M), Brown, Wingo, Fincher, McClammy,
5 McCormick, Beech, Knight, Lawrence, Forte, England, South,
6 Carns, Ford, Faulkner, Drake, Grimsley, Greer, Hammon, Buskey,
7 Shiver, Collins, Coleman, Baker, McMillan, Boothe, Moore (M),
8 Givan, Robinson, Faust, Patterson, Nordgren, Scott,
9 Whorton (I), Ball, Whorton (R), Williams (P), Sanderford,
10 Hall, Todd and Harper
11 RFD: Economic Development and Tourism
12 First Read: 11-FEB-16

8 SYNOPSIS: Under existing law, a licensed manufacturer
9 of beer or a brewpub may not sell its beer directly
10 to a consumer for off-premises consumption.

11 This bill would allow a licensed brewery
12 manufacturing less than 60,000 barrels per year to
13 sell at retail up to 288 ounces of its beer per day
14 to a customer for off-premises consumption.

15 This bill would allow a licensed brewpub to
16 sell at retail up to 288 ounces of its beer per day
17 to a customer for off-premises consumption.

18 This bill would specify that beer sold for
19 off-site consumption must be sealed, packaged, and
20 labeled in accordance with current rules.

21 This bill would allow a licensed brewery or
22 brewpub to deliver up to two donated kegs of its
23 beer to a licensed charitable event.

24 This bill would also delete the restriction
25 on brewpubs from locating only in historic
26 buildings, historic districts, economically
27 distressed areas, or those wet counties in the

1 state in which beer was brewed for public
2 consumption prior to Prohibition.

3
4 A BILL

5 TO BE ENTITLED

6 AN ACT

7
8 Relating to alcoholic beverages; to amend Sections
9 28-3-1, 28-3A-6, and 28-4A-3 of the Code of Alabama 1975, to
10 allow a licensed brewery manufacturing less than 60,000
11 barrels per year to sell at retail up to 288 ounces of its
12 beer per day to a customer for off-premises consumption; to
13 allow a licensed brewpub to sell at retail up to 288 ounces of
14 its beer per day to a customer for off-premises consumption;
15 to specify that beer sold by a brewery or brewpub for off-site
16 consumption must be sealed, packaged, labeled, and taxed in
17 accordance with current rules; to allow a licensed brewery or
18 brewpub to deliver up to two donated kegs of its beer to a
19 licensed charitable event; and to delete the restriction on
20 brewpubs from locating only in historic buildings, historic
21 districts, economically distressed areas, or those wet
22 counties in the state in which beer was brewed for public
23 consumption prior to Prohibition.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Sections 28-3-1, 28-3A-6, and 28-4A-3 of
26 the Code of Alabama 1975, are amended to read as follows:

27 "§28-3-1.

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

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

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

"(3) BEER, or MALT OR BREWED BEVERAGES. Except as otherwise provided in this subdivision, any beer, lager beer, ale, porter, malt or brewed beverage, or similar fermented malt liquor containing one-half of one percent or more of 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 "(5) CARTON. The package or container or containers
5 in which alcoholic beverages are originally packaged for
6 shipment to market by the manufacturer or its designated
7 representatives or the importer.

8 "(6) CIDER. A fermented alcoholic beverage made from
9 apple juice and containing not more than 8.5 percent alcohol
10 by volume.

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

16 "(8) CLUB.

17 "a. Class I. A corporation or association organized
18 or formed in good faith by authority of law and which must
19 have at least 150 paid-up members. It must be the owner,
20 lessee, or occupant of an establishment operated solely for
21 the objects of a national, social, patriotic, political, or
22 athletic nature or the like, but not for pecuniary gain, and
23 the property as well as the advantages of which, belong to all
24 the members and which maintains an establishment provided with
25 special space and accommodations where, in consideration of
26 payment, food with or without lodging is habitually served.
27 The club shall hold regular meetings, continue its business

1 through officers regularly elected, admit members by written
2 application, investigation, and ballot and charge and collect
3 dues from elected members.

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

13 " (9) CORPORATION. A corporation or joint stock
14 association organized under the laws of this state, the United
15 States, or any other state, territory or foreign country, or
16 dependency.

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

25 " (11) DRY MUNICIPALITY. Any municipality within a
26 wet county which has, by its governing body or by a majority
27 of those voting in a municipal election heretofore held in

1 accordance with the provisions of Section 28-2-22, or in a
2 municipal option election heretofore or hereafter held in
3 accordance with the provisions of Act 84-408, Acts of Alabama
4 1984, appearing as Chapter 2A of this title, or any act
5 hereafter enacted permitting municipal option election, voted
6 to exclude the sale of alcoholic beverages within the
7 corporate limits of the municipality.

8 "(12) GENERAL WELFARE PURPOSES.

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

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

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

17 "d. Investigative and referral services to and on
18 behalf of needy persons.

19 "(13) HEARING COMMISSION. A body appointed by the
20 board to hear and decide all contested license applications
21 and all disciplinary charges against any licensee for
22 violation of this title or the regulations of the board.

23 "(14) HOTEL. A building or buildings held out to the
24 public for housing accommodations of travelers or transients,
25 and shall include motel, but shall not include a rooming house
26 or boarding house.

1 "(15) IMPORTER. Any person, association or
2 corporation engaged in importing alcoholic beverages, liquor,
3 wine, or beer, manufactured outside of the United States of
4 America into this state or for sale or distribution in this
5 state, or to the board or to a licensee of the board.

6 "(16) LIQUOR. Any alcoholic, spirituous, vinous,
7 fermented, or other alcoholic beverage, or combination of
8 liquors and mixed liquor, a part of which is spirituous,
9 fermented, vinous 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, except beer and table wine.

13 "(17) LIQUOR STORE. A liquor store operated by the
14 board, where alcoholic beverages other than beer are
15 authorized to be sold in unopened containers.

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

22 "(19) MEAD. An alcoholic beverage produced by
23 fermenting a solution of honey and water with grain mash and
24 containing not more than 18 percent alcohol by volume.

25 "(20) MINOR. Any person under 21 years of age,
26 ~~except a person 19 years of age or older prior to October 1,~~
27 ~~1985, is not a minor; provided, however, in the event Section~~

1 28-1-5, shall be repealed or otherwise shall be no longer in
2 effect, thereafter the provisions of Section 26-1-1, shall
3 govern.

4 "(21) MUNICIPALITY. Any incorporated city or town of
5 this state to include its police jurisdiction.

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

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

23 "(24) RESTAURANT. A reputable place licensed as a
24 restaurant, operated by a responsible person of good
25 reputation and habitually and principally used for the purpose
26 of preparing and serving meals for the public to consume on
27 the premises.

1 "(25) MEAL. A diversified selection of food some of
2 which is not susceptible of being consumed in the absence of
3 at least some articles of tableware and which cannot be
4 conveniently consumed while one is standing or walking about.

5 "(26) RETAILER. Any person licensed by the board to
6 engage in the retail sale of any alcoholic beverages to the
7 consumer.

8 "(27) SALE or SELL. Any transfer of liquor, wine or
9 beer for a consideration, and any gift in connection with, or
10 as a part of, a transfer of property other than liquor, wine
11 or beer for a consideration.

12 "(28) SELLING PRICE. The total marked-up price of
13 spirituous or vinous liquors sold by the board, exclusive of
14 taxes levied thereon.

15 "(29) UNOPENED CONTAINER. A container containing
16 alcoholic beverages, which has not been opened or unsealed
17 subsequent to filling and sealing by the manufacturer or
18 importer.

19 "(30) WET COUNTY. Any county which by a majority of
20 those voting voted in the affirmative in an election
21 heretofore held in accordance with the statutes applicable at
22 the time of the election or may hereafter vote in the
23 affirmative in an election or special method referendum held
24 in accordance with the provisions of Chapter 2 of this title,
25 or other statutes applicable at the time of the election.

26 "(31) WET MUNICIPALITY. Any municipality in a dry
27 county which by a majority of those voting voted in the

1 affirmative in a municipal option election heretofore or
2 hereafter held in accordance with the provisions of Act
3 84-408, Acts of Alabama 1984, appearing as Chapter 2A of this
4 title, as amended, or any act hereafter enacted permitting
5 municipal option election, or any municipality which became
6 wet by vote of the governing body or by the voters of the
7 municipality heretofore or hereafter held under the special
8 method referendum provisions of Section 28-2-22, or as
9 hereafter provided, where the county has become dry subsequent
10 to the elected wet status of the municipality.

11 "(32) WHOLESALER. Any person licensed by the board
12 to engage in the sale and distribution of table wine and beer,
13 or either of them, within this state, at wholesale only, to be
14 sold by export or to retail licensees or other wholesale
15 licensees or others within this state lawfully authorized to
16 sell table wine and beer, or either of them, for the purpose
17 of resale only.

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

26 "(34) TABLE WINE. Except as otherwise provided in
27 this subdivision, any wine containing not more than 24 percent

1 alcohol by volume. Table wine does not include any wine
2 containing more than sixteen and one-half percent alcohol by
3 volume that is made with herbs or flavors, except vermouth, or
4 is an imitation or other than standard wine. Table wine is not
5 liquor, spirituous, or vinous.

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

12 "(36) KEG. A pressurized factory sealed container
13 with a capacity equal to or greater than five US gallons, from
14 which beer is withdrawn by means of an external tap.

15 "§28-3A-6.

16 "(a) Upon applicant's compliance with the provisions
17 of this chapter and the regulations made thereunder, the board
18 shall issue to applicant a manufacturer license which shall
19 authorize the licensee to manufacture or otherwise distill,
20 produce, ferment, brew, bottle, rectify, or compound alcoholic
21 beverages within this state or for sale or distribution within
22 this state. No person shall manufacture or otherwise distill,
23 produce, ferment, brew, bottle, rectify or compound alcoholic
24 beverages within this state or for sale or distribution within
25 this state or to the state, the board, or any licensee of the
26 board, unless such person or the authorized representative of

1 the person shall be granted a manufacturer license issued by
2 the board.

3 "(b) No manufacturer licensee shall sell any
4 alcoholic beverages direct to any retailer or for consumption
5 on the premises where sold except as specified under
6 subsection (h)(1), nor sell or deliver any such alcoholic
7 beverages in other than original containers approved as to
8 capacity by the board and in accordance with standards of fill
9 prescribed by the U. S. Treasury Department, nor maintain or
10 operate within the state any place or places, other than the
11 place or places covered by the manufacturer license, where
12 alcoholic beverages are sold or where orders are taken.

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

24 "(d) All such manufacturer licensees shall be
25 required to mail to the board prior to the twentieth day of
26 each month a consolidated report of all shipments of alcoholic
27 beverages made to each wholesaler during the preceding month.

1 Such reports shall be in such form and containing such
2 information as the board may prescribe.

3 "(e) Every manufacturer shall keep at its principal
4 place of business within the state, daily permanent records
5 which shall show the quantities of raw materials received and
6 used in the manufacture of alcoholic beverages, and the
7 quantities of alcoholic beverages manufactured and stored, the
8 sale of alcoholic beverages, the quantities of alcoholic
9 beverages stored for hire or transported for hire by or for
10 the licensee and the names and addresses of the purchasers or
11 other recipients thereof.

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

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

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

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

17 "(2) Notwithstanding subdivision (1), a manufacturer
18 licensee engaged in the manufacture of less than 60,000
19 barrels of beer per year may sell at retail on its licensed
20 premises in the state, for off-premises consumption, beer
21 produced at that licensed premises; provided, however, beer
22 sold for off-premises consumption: May not exceed 288 ounces
23 per customer per day; may not be produced pursuant to a
24 contract with another manufacturer; and shall be sealed,
25 labeled, packaged, and taxed in accordance with state and
26 federal laws and regulations. For purposes of this
27 subdivision, beer produced by a parent, subsidiary, or

1 affiliate of the licensee, or by a contract brewery,
2 regardless of where the beer is produced, shall be included
3 for purposes of calculating the 60,000 barrel limit.

4 "(i) (1) In addition to the licenses provided for by
5 Chapter 3A of this title, and any county or municipal license,
6 there is levied on the manufacturer of the alcoholic beverages
7 dispensed on the premises the privilege or excise tax imposed
8 on beer by Sections 28-3-184 and 28-3-190; and imposed on
9 table wine by Section 28-7-18; and imposed on liquor by
10 Sections 28-3-200 to 28-3-205, inclusive. Every manufacturer
11 licensee shall file the tax returns, pay the taxes, and
12 perform all obligations imposed on wholesalers at the times
13 and places set forth therein. It shall be unlawful for any
14 manufacturer licensee who is required to pay the taxes so
15 imposed in the first instance to fail or refuse to add to the
16 sale price and collect from the purchaser the required amount
17 of tax, it being the intent and purpose of this provision that
18 each of the taxes levied is in fact a tax on the consumer,
19 with the manufacturer licensee who pays the tax in the first
20 instance acting merely as an agent of the state for the
21 collection and payment of the tax levied by Section 28-3-184;
22 as an agent for the county or municipality for the collection
23 and payment of the tax levied by Section 28-3-190; as an agent
24 for the county or municipality for collection and payment of
25 the tax levied by Section 28-7-18; and as an agent for the
26 state for collection and payment of the tax levied by Sections
27 28-3-200 to 28-3-205, inclusive.

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

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

13 "§28-4A-3.

14 "(a) In addition to the licenses authorized to be
15 issued and renewed by the board pursuant to the Alcoholic
16 Beverage Licensing Code codified as Chapter 3A of this title,
17 the board, upon applicant's compliance with the provisions of
18 this chapter and with Chapter 3A and the regulations made
19 thereunder, is authorized to issue to a qualified applicant a
20 brewpub license which shall authorize the licensee to
21 manufacture or brew beer, in a quantity not to exceed 10,000
22 barrels in any one year and to sell beer brewed on the
23 licensed premises in unpackaged form at retail for on-premises
24 consumption at the licensed premises only; to sell beer
25 brewed on the licensed premises in packaged form at retail for
26 off-premises consumption, provided the beer sold for
27 off-premises consumption may not exceed 288 ounces per

customer per day and shall be sealed, labeled, packaged, and taxed in accordance with state and federal laws and regulations; to sell beer brewed on the premises in original, unopened barrel or keg containers to any licensed wholesaler designated by a brewpub licensee pursuant to Sections 28-8-2 and 28-9-3 for resale to retail licensees; to donate and deliver up to two kegs of the licensee's beer to a licensed charitable special event operated by or on behalf of a nonprofit organization; provided, however, donations shall be taxed in accordance with state and federal laws and regulations, and any beer remaining at the conclusion of the charitable event shall be returned to the manufacturer for disposal; and to purchase beer, including draft or keg beer, in original, unopened containers from licensed wholesalers and to sell such beer at retail for on-premises consumption only, in a room or rooms or place on the licensed premises at all times accessible to the use and accommodation of the general public, subject to the following conditions:

"(1) The brewpub premises must be located in an historic building or site as defined in Section 40-8-1, or in a registered historic district, or in any economically distressed area designated as suitable by the municipal or county governing body, in a wet county or wet municipality, in which county beer was brewed for public consumption prior to the ratification of the Eighteenth Amendment to the U.S. Constitution in 1919.

1 "(2)(1) The proposed location of the premises shall
2 not, at the time of the original application, be prohibited by
3 a valid zoning ordinance or other ordinance in the valid
4 exercise of police power by the governing body of the
5 municipality or county in which the brewpub is located.

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

12 "(4)(3) The brewpub must contain and operate a
13 restaurant or otherwise provide food for consumption on the
14 premises.

15 "(5)(4) The brewpub may not sell any alcoholic
16 beverages if it is not actively and continuously engaged in
17 the manufacture or brewing of alcoholic beverages on the
18 brewpub's licensed premises.

19 "(b) The annual license fee levied and prescribed
20 for a license as a brewpub issued or renewed by the board
21 pursuant to the authority of this chapter is \$1,000.

22 "(c) Except as provided in this subsection, the
23 provisions of this title shall be applicable. The provisions
24 of Section 28-3-4 and subsection (b) of Section 28-3A-6, shall
25 not be applicable with regard to beer brewed by the brewpub
26 and sold and dispensed on the brewpub premises. In all other

1 respects, Section 28-3-4 and Section 28-3A-6(b) shall be
2 applicable."

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