

1 SB315  
2 127419-2  
3 By Senators Brooks and Glover (N & P)  
4 RFD: Local Legislation No. 3  
5 First Read: 31-MAR-11

1 SB315

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4 With Notice and Proof

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6 ENROLLED, An Act,

7 To amend Section 28-1-6, Code of Alabama 1975,  
8 relating to the approval or denial of alcoholic beverage  
9 licenses in Class 2 municipalities, to delete the requirement  
10 for de novo review by the circuit court of certain decisions  
11 of the municipality denying certain licenses.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Section 28-1-6, Code of Alabama 1975, is  
14 amended to read as follows:

15 "§28-1-6.

16 "(a) (1) All other provisions of law, rules, or  
17 regulations to the contrary notwithstanding, the Alabama  
18 Alcoholic Beverage Control Board shall absolutely have no  
19 authority to issue any form of license in a Class 1  
20 municipality, including, but not limited to, off-premise  
21 consumption licenses, restaurant licenses, or club licenses,  
22 for the retail sale of any form of intoxicating beverages,  
23 including, but not limited to, malt liquor, beer, wine,  
24 liquor, or other alcoholic beverage regulated by the board,  
25 unless one of the following requirements is satisfied:

1            "a. The application has first been approved by the  
2 governing body of the Class 1 municipality in which the site  
3 of the license is situated.

4            "b. The denial of approval by the Class 1 governing  
5 body has been set aside by order of the circuit court of the  
6 county in which the site is situated on the ground that the  
7 municipal approval was arbitrarily or capriciously denied  
8 without a showing of one of the following:

9            "1. The creation of a nuisance.

10           "2. Circumstances clearly detrimental to or which  
11 would adversely affect the public health, safety, and welfare  
12 of the adjacent residential neighborhoods.

13           "3. A violation of applicable zoning restrictions or  
14 regulations.

15           "4. An individual applying for the license has a  
16 prior conviction involving the use of alcohol or a controlled  
17 substance.

18           "5. The proximity of the business to a school or  
19 child care facility and the business hours of the operation  
20 will create a harmful environment for the children.

21           "6. The traffic congestion created by licensing the  
22 proposed location will endanger others.

23           "7. Any other reason that poses a risk.

24           "(2) Proceedings in the circuit courts to review an  
25 action of a Class 1 municipal governing body denying approval

1 of an application shall be expedited de novo proceedings heard  
2 by a circuit judge without a jury who shall consider any  
3 testimony presented by the city governing body and any new  
4 evidence presented in explanation or contradiction of the  
5 testimony. Any proceeding to review the denial of approval of  
6 a license application shall be commenced within 14 days of the  
7 action by the municipal governing body and shall be set for  
8 hearing by the court within 30 days thereafter.

9 " (b) (1) All other provisions of law, rules, or  
10 regulations to the contrary notwithstanding, the Alabama  
11 Alcoholic Beverage Control Board shall absolutely have no  
12 authority to issue any form of license in a Class 2  
13 municipality, including, but not limited to, off-premise  
14 consumption licenses, restaurant licenses, or club licenses,  
15 for the retail sale of any form of intoxicating beverages,  
16 including, but not limited to, malt liquor, beer, wine,  
17 liquor, or other alcoholic beverage regulated by the board  
18 unless one of the following requirements is satisfied:

19 "a. The application was first approved by the  
20 governing body of the municipality in which the site of the  
21 license is situated.

22 "b. The denial of the approval by the governing body  
23 has been set aside by order of the circuit court of the county  
24 in which the site is situated on the ground that this

1 municipal approval was arbitrarily or capriciously denied  
2 without a showing of one of the following:

3 "1. The creation of a nuisance.

4 "2. Circumstances detrimental to adjacent  
5 residential neighborhoods.

6 "3. Circumstances detrimental to the public health,  
7 safety, and welfare.

8 "4. A violation of applicable zoning restrictions or  
9 regulations.

10 "5. An individual applying for the license, or an  
11 individual who is an officer or director of a corporation or  
12 other entity applying for the license, has a prior conviction  
13 involving the use of alcohol or a controlled substance or a  
14 prior conviction involving the illegal sale of alcohol or a  
15 controlled substance.

16 "6. The proximity of the proposed business to a  
17 school or child care facility and the business hours of the  
18 proposed business will create a harmful environment for the  
19 children.

20 "7. Traffic congestion created by licensing the  
21 proposed business.

22 "8. Any other reason that poses a risk to  
23 surrounding neighborhoods or to the public health, safety, and  
24 welfare.

1           "(2) Proceedings in circuit court to review an  
2           action of a Class 2 municipal governing body denying approval  
3           of a license application shall be expedited proceedings, heard  
4           by a circuit judge without a jury. Any proceeding to review  
5           the denial of approval of a license application shall be  
6           commenced within 14 days of the action by the municipal  
7           governing body and shall be set for hearing by the court  
8           within 30 days thereafter."

9           Section 2. This act shall become effective  
10          immediately following its passage and approval by the  
11          Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB315

Senate 06-APR-11

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris  
Secretary

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House of Representatives  
Passed: 09-JUN-11

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By: Senator Brooks