

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

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8 SYNOPSIS: In Class 2 municipalities, decisions of the
9 municipality denying certain alcoholic beverage
10 licenses are subject to review by the circuit court
11 by a trial de novo.

12 This bill would delete the requirement that
13 the review be de novo

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15 A BILL
16 TO BE ENTITLED
17 AN ACT

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19 To amend Section 28-1-6, Code of Alabama 1975,
20 relating to the approval or denial of alcoholic beverage
21 licenses in Class 2 municipalities, to delete the requirement
22 for de novo review by the circuit court of certain decisions
23 of the municipality denying certain licenses.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

27 "§28-1-6.

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

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

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

19 "1. The creation of a nuisance.

20 "2. Circumstances clearly detrimental to or which
21 would adversely affect the public health, safety, and welfare
22 of the adjacent residential neighborhoods.

23 "3. A violation of applicable zoning restrictions or
24 regulations.

25 "4. An individual applying for the license has a
26 prior conviction involving the use of alcohol or a controlled
27 substance.

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

4 "6. The traffic congestion created by licensing the
5 proposed location will endanger others.

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

7 "(2) Proceedings in the circuit courts to review an
8 action of a Class 1 municipal governing body denying approval
9 of an application shall be expedited de novo proceedings heard
10 by a circuit judge without a jury who shall consider any
11 testimony presented by the city governing body and any new
12 evidence presented in explanation or contradiction of the
13 testimony. Any proceeding to review the denial of approval of
14 a license application shall be commenced within 14 days of the
15 action by the municipal governing body and shall be set for
16 hearing by the court within 30 days thereafter.

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

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

4 "b. The denial of the approval by the governing body
5 has been set aside by order of the circuit court of the county
6 in which the site is situated on the ground that this
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 detrimental to adjacent
11 residential neighborhoods.

12 "3. Circumstances detrimental to the public health,
13 safety, and welfare.

14 "4. A violation of applicable zoning restrictions or
15 regulations.

16 "5. An individual applying for the license, or an
17 individual who is an officer or director of a corporation or
18 other entity applying for the license, has a prior conviction
19 involving the use of alcohol or a controlled substance or a
20 prior conviction involving the illegal sale of alcohol or a
21 controlled substance.

22 "6. The proximity of the proposed business to a
23 school or child care facility and the business hours of the
24 proposed business will create a harmful environment for the
25 children.

26 "7. Traffic congestion created by licensing the
27 proposed business.

1 "8. Any other reason that poses a risk to
2 surrounding neighborhoods or to the public health, safety, and
3 welfare.

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

12 Section 2. This act shall become effective
13 immediately following its passage and approval by the
14 Governor, or its otherwise becoming law.