

1 HB657
2 151312-2
3 By Representatives Ison and Barton (N & P)
4 RFD: Mobile County Legislation
5 First Read: 23-APR-13

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to Mobile County; to allow a person who is
14 on active duty, in active reserve status, or retired from the
15 Armed Forces of the United States, or the dependent of such
16 person, to have an reasonable quantity of alcoholic beverages
17 purchased from a military liquor store or in-state liquor
18 store; to provide certain findings and declarations; and to
19 provide for a civil penalty for a violation of this act.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. (a) The Legislature of Alabama is
22 cognizant of "Opinion of the Justices No. 376," issued April
23 9, 2002, which states that a local bill for Washington County
24 "purporting to allow by local law the creation of a traffic in
25 alcohol that does not presently exist in smaller
26 municipalities in Washington County, does not fit within the
27 ambit of the last paragraph of Section 104 permitting the

1 Legislature to pass local laws regulating or prohibiting such
2 traffic." The effect of this Opinion of the Justices is to
3 greatly limit situations in which local laws may be enacted
4 regarding alcoholic beverages. This opinion, in part, was
5 based upon a determination that, "Generally, 'regulate'
6 implies the exercise of control over something that already
7 exists." While respecting the constitutional authority granted
8 to the Alabama Supreme Court to interpret the Constitution of
9 Alabama of 1901, this body disagrees with the conclusion
10 reached by the court concerning Section 104. In an effort to
11 further define this issue and to assist the court in the
12 appropriate interpretation of Section 104, the Legislature of
13 Alabama respectfully makes the following findings:

14 (1) As used in Section 104, the term "regulate" was
15 not intended to be of a narrowing or restraining nature. If
16 that was the intent of the framers of the Constitution, an
17 appropriate verb such as "limit," "restrict," or "suppress,"
18 in conjunction with the phrase "existing laws," would have
19 been employed.

20 (2) With all due respect to the court, the word
21 "regulate" does not generally imply "the exercise of control
22 over something that already exists" and such a construction is
23 not the "general sense of the phrase." To the contrary, one of
24 the initial definitions of regulate in "Black's Law
25 Dictionary" is "to fix, establish, or control"; and
26 "establish" in the same dictionary includes the definition "to
27 found, to create, to regulate." Unquestionably, regulate does

1 not imply application only to something in existence; rather,
2 the term includes the "establishment" or "creation" of the
3 thing to be subsequently managed.

4 (3) The interpretation of the term "regulation"
5 adopted by the court, if applied to other federal and state
6 constitutional and statutory provisions, will result in
7 unreasonable and unintended restrictions. For instance, the
8 language in Article I, Section 8 of the United States
9 Constitution, "The congress shall have power...to regulate
10 commerce..." was not intended to apply only to types of
11 commerce in existence at the time the United States
12 Constitution was adopted. In fact, the U.S. Supreme Court has
13 stated that this clause should be broadly construed to meet
14 the over-expanding and increasingly complicated conditions of
15 commerce. Similarly, numerous state statutes are initially
16 adopted to regulate certain types of professional or
17 vocational activities or functions, and these activities or
18 functions are concurrently initially authorized. Under the
19 court's construction, if such activities or functions are not
20 first in existence, they may not subsequently be controlled.

21 (4) In view of the research of the court indicating
22 the absence of any discussion concerning this issue in the
23 debates of the 1901 Constitutional Convention, and the absence
24 of any reference to historical records of that time, the
25 interpretation of Section 104 by modern era historians should
26 only be given marginal consideration. As stated by the court,
27 such historical perspectives merely give the "appearance" of

1 intent, and, accordingly, are not supportive of specific
2 construction of Section 104.

3 (5) The concluding paragraph of Section 104 is a
4 unique provision providing for a form of local option or home
5 rule. In view of the present sentiments of Alabama citizens to
6 allow local control of public matters, it is essential that
7 this body and the judiciary appropriately interpret this
8 provision.

9 (b) Based upon the reasons expressed in subsection
10 (a), as a matter of law, the Legislature declares that this
11 act regulates the liquor traffic within the meaning and intent
12 of Section 104 of the Constitution of Alabama of 1901.

13 Section 2. (a) Notwithstanding the provisions of
14 Section 28-1-3.1 of the Code of Alabama 1975, any person 21
15 years of age or over who is on active duty, in active reserve
16 status, or retired from the Armed Forces of the United States,
17 or the dependent of the person, or is otherwise eligible to
18 purchase alcoholic beverage from military package or liquor
19 stores, shall be entitled to have in his or her possession, in
20 his or her motor vehicle, or a private residence or place of
21 private residence or the curtilage thereof in any county in
22 this state, for his or her own private use and not for resale,
23 a reasonable quantity of alcoholic beverage as defined in
24 Section 28-3-1, Code of Alabama 1975, if:

25 (1) The alcoholic beverage was sold by a military
26 liquor, package, Class 6, or similar store or outlet that

1 purchased its stock from licensed Alabama wholesalers or the
2 Alabama Alcoholic Beverage Control Board.

3 (2) The person shall have sufficient identification,
4 including, but not limited to, a sales receipt, to show that
5 the alcoholic beverage was purchased in Alabama and sold by
6 the military store or outlet.

7 (b) A person who violates this act, upon the first
8 violation, shall be subject to a civil penalty not to exceed
9 five hundred dollars (\$500).

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