

1 HB542
2 200451-1
3 By Representative Nordgren
4 RFD: Economic Development and Tourism
5 First Read: 02-MAY-19

SYNOPSIS: Under existing law, breweries, wineries, and distilleries may operate an on-site tasting room to dispense and sell their own alcoholic beverages.

This bill would allow a licensed manufacturer of alcoholic beverages to dispense and sell at its on-site tasting room, alcoholic beverages that are manufactured in this state but not by the manufacturer, so long as the other manufacturer is under common ownership with the brewery, winery, or distillery.

This bill would also define terms.

A BILL
TO BE ENTITLED
AN ACT

Relating to alcoholic beverages; to amend Section 28-3-1 and Section 28-3A-6, as last amended by Act 2018-447, 2018 Regular Session, Code of Alabama 1975; to allow a brewery, winery, or distillery to dispense and sell at its

1 on-site tasting room alcoholic beverages transferred from
2 another manufacturer under common ownership with the brewery,
3 winery, or distillery; and to define terms.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Section 28-3-1 and Section 28-3A-6, as
6 last amended by Act 2018-447, 2018 Regular Session, Code of
7 Alabama 1975, are amended to read as follows:

8 "§28-3-1.

9 "As used in this title, the following words shall
10 have the following meanings unless the context clearly
11 indicates otherwise:

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

10 "(6) BREWPUB. Any premises upon which beer is
11 actively and continuously manufactured or brewed, subject to
12 the barrel production limitation prescribed in Chapter 4A, for
13 consumption on or off the premises where manufactured, or for
14 sale to any designated wholesaler licensee for resale to
15 retail licensees.

16 "(7) BREWERY. A manufacturer of beer.

17 "~~(6)~~(8) CARTON. The package or container or
18 containers in which alcoholic beverages are originally
19 packaged for shipment to market by the manufacturer or its
20 designated representatives or the importer.

21 "~~(7)~~(9) CIDER. A fermented alcoholic beverage made
22 from apple juice and containing not more than 8.5 percent
23 alcohol by volume.

24 "~~(8)~~(10) CLUB.

25 "a. Class I. A corporation or association organized
26 or formed in good faith by authority of law and which must
27 have at least 150 paid-up members. It must be the owner,

1 lessee, or occupant of an establishment operated solely for
2 the objects of a national, social, patriotic, political, or
3 athletic nature or the like, but not for pecuniary gain, and
4 the property as well as the advantages of which, belong to all
5 the members and which maintains an establishment provided with
6 special space and accommodations where, in consideration of
7 payment, food with or without lodging is habitually served.
8 The club shall hold regular meetings, continue its business
9 through officers regularly elected, admit members by written
10 application, investigation, and ballot and charge and collect
11 dues from elected members.

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

21 "(11) COMMON OWNERSHIP. Two manufacturers shall be
22 considered to be under common ownership if a single entity has
23 a majority financial interest in and majority control of both
24 manufacturers.

25 "~~(9)~~ (12) CONTAINER. The single bottle, can, keg,
26 bag, or other receptacle, not a carton, in which alcoholic
27 beverages are originally packaged for the market by the

1 brewpub, manufacturer, or importer and from which the
2 alcoholic beverage is consumed by or dispensed to the public.

3 "~~(10)~~ (13) CORPORATION. A corporation or joint stock
4 association organized under the laws of this state, the United
5 States, or any other state, territory or foreign country, or
6 dependency.

7 "(14) DISTILLERY. A manufacturer of liquor.

8 "~~(11)~~ (15) DRY COUNTY. Any county which by a majority
9 of those voting voted in the negative in an election
10 heretofore held under the applicable statutes at the time of
11 the election or may hereafter vote in the negative in an
12 election or special method referendum hereafter held in
13 accordance with the provisions of Chapter 2 of this title, or
14 held in accordance with the provisions of any act hereafter
15 enacted permitting such election.

16 "~~(12)~~ (16) DRY MUNICIPALITY. Any municipality within
17 a wet county which has, by its governing body or by a majority
18 of those voting in a municipal election heretofore held in
19 accordance with the provisions of Section 28-2-22, or in a
20 municipal option election heretofore or hereafter held in
21 accordance with the provisions of Act 84-408, Acts of Alabama
22 1984, appearing as Chapter 2A of this title, or any act
23 hereafter enacted permitting municipal option election, voted
24 to exclude the sale of alcoholic beverages within the
25 corporate limits of the municipality.

26 "~~(13)~~ (17) GENERAL WELFARE PURPOSES.

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

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

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

9 "d. Investigative and referral services to and on
10 behalf of needy persons.

11 "~~(14)~~ (18) HEARING COMMISSION. A body appointed by
12 the board to hear and decide all contested license
13 applications and all disciplinary charges against any licensee
14 for violation of this title or the regulations of the board.

15 "~~(15)~~ (19) HOTEL. A building or buildings held out to
16 the public for housing accommodations of travelers or
17 transients, and shall include motel, but shall not include a
18 rooming house or boarding house.

19 "~~(16)~~ (20) IMPORTER. Any person, association, or
20 corporation engaged in importing alcoholic beverages, liquor,
21 wine, or beer, manufactured outside of the United States of
22 America into this state or for sale or distribution in this
23 state, or to the board or to a licensee of the board.

24 "~~(17)~~ (21) KEG. A pressurized factory sealed
25 container with a capacity equal to or greater than five US
26 gallons, from which beer is withdrawn by means of an external
27 tap.

1 "~~(18)~~ (22) LIQUOR. Any alcoholic, spirituous, vinous,
2 fermented, or other alcoholic beverage, or combination of
3 liquors and mixed liquor, a part of which is spirituous,
4 fermented, vinous or otherwise alcoholic, and all drinks or
5 drinkable liquids, preparations or mixtures intended for
6 beverage purposes, which contain one-half of one percent or
7 more of alcohol by volume, except beer and table wine.

8 "~~(19)~~ (23) LIQUOR STORE. A liquor store operated by
9 the board, where alcoholic beverages other than beer are
10 authorized to be sold in unopened containers.

11 "~~(20)~~ (24) MANUFACTURER. Any person, association, or
12 corporation engaged in the producing, bottling, manufacturing,
13 distilling, rectifying, or compounding of alcoholic beverages,
14 liquor, beer, or wine in this state or for sale or
15 distribution in this state or to the board or to a licensee of
16 the board.

17 "~~(21)~~ (25) MEAD. An alcoholic beverage produced by
18 fermenting a solution of honey and water with grain mash and
19 containing not more than 18 percent alcohol by volume.

20 "~~(22)~~ (26) MEAL. A diversified selection of food some
21 of which is not susceptible of being consumed in the absence
22 of at least some articles of tableware and which cannot be
23 conveniently consumed while one is standing or walking about.

24 "~~(23)~~ (27) MINOR. Any person under 21 years of age;
25 provided, however, in the event Section 28-1-5, ~~shall be~~ is
26 repealed or otherwise ~~shall be~~ no longer in effect, thereafter
27 the provisions of Section 26-1-1~~7~~ shall govern.

1 "~~(24)~~ (28) MUNICIPALITY. Any incorporated city or
2 town of this state to include its police jurisdiction.

3 "~~(25)~~ (29) PERSON. Every natural person, association,
4 or corporation. Whenever used in a clause prescribing or
5 imposing a fine or imprisonment, or both, such term as applied
6 to association shall mean the partners or members thereof and
7 as applied to corporation shall mean the officers thereof,
8 except as to incorporated clubs the term person shall mean
9 such individual or individuals who, under the bylaws of such
10 clubs, shall have jurisdiction over the possession and sale of
11 liquor therein.

12 "~~(26)~~ (30) POPULATION. The population according to
13 the last preceding or any subsequent decennial census of the
14 United States, except where a municipality is incorporated
15 subsequent to the last census, in which event, its population
16 until the next decennial census shall be the population of the
17 municipality as determined by the judge of probate of the
18 county as the official population on the date of its
19 incorporation.

20 "~~(27)~~ (31) RESTAURANT. A reputable place licensed as
21 a restaurant, operated by a responsible person of good
22 reputation and habitually and principally used for the purpose
23 of preparing and serving meals for the public to consume on
24 the premises.

25 "~~(28)~~ (32) RETAILER. Any person licensed by the board
26 to engage in the retail sale of any alcoholic beverages to the
27 consumer.

1 "~~(29)~~(33) SALE or SELL. Any transfer of liquor,
2 wine, or beer for a consideration, and any gift in connection
3 with, or as a part of, a transfer of property other than
4 liquor, wine, or beer for a consideration.

5 "~~(30)~~(34) SELLING PRICE. The total marked-up price
6 of spirituous or vinous liquors sold by the board, exclusive
7 of taxes levied thereon.

8 "~~(31)~~(35) TABLE WINE. Except as otherwise provided
9 in this subdivision, any wine containing not more than 24
10 percent alcohol by volume. Table wine does not include any
11 wine containing more than sixteen and one-half percent alcohol
12 by volume that is made with herbs or flavors, except vermouth,
13 or is an imitation or other than standard wine. Table wine is
14 not liquor, spirituous, or vinous.

15 "~~(32)~~(36) 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 "~~(33)~~(37) WET COUNTY. Any county which by a majority
20 of 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 "~~(34)~~(38) WET MUNICIPALITY. Any municipality in a
27 dry 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 "~~(35)~~ (39) WHOLESALER. Any person licensed by the
12 board to engage in the sale and distribution of table wine and
13 beer, or either of them, within this state, at wholesale only,
14 to be 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 "~~(36)~~ (40) WINE. All beverages made from the
19 fermentation of fruits, berries, or grapes, with or without
20 added spirits, and produced in accordance with the laws and
21 regulations of the United States, containing not more than 24
22 percent alcohol by volume, and shall include all sparkling
23 wines, carbonated wines, special natural wines, rectified
24 wines, vermouths, vinous beverages, vinous liquors, and like
25 products, including restored or unrestored pure condensed
26 juice.

27 "(41) WINERY. A manufacturer of table wine.

1 "§28-3A-6.

2 "(a) Upon applicant's compliance with the provisions
3 of this chapter and the ~~regulations made~~ rules adopted
4 thereunder, the board shall issue to applicant a manufacturer
5 license ~~which shall authorize~~ that authorizes the licensee to
6 manufacture or otherwise distill, produce, ferment, brew,
7 bottle, rectify, or compound alcoholic beverages within this
8 state or for sale or distribution within this state. No person
9 shall manufacture or otherwise distill, produce, ferment,
10 brew, bottle, rectify, or compound alcoholic beverages within
11 this state or for sale or distribution within this state or to
12 the state, the board, or any licensee of the board, unless
13 such person or the authorized representative of the person
14 shall be granted a manufacturer license issued by the board.

15 "(b) ~~No~~ Except as specified in subsection (h), no
16 manufacturer licensee shall sell any alcoholic beverages
17 direct to any retailer or for consumption on the premises
18 where sold ~~except as specified under subsection (h), nor sell~~
19 or deliver any such alcoholic beverages in other than original
20 containers approved as to capacity by the board and in
21 accordance with standards of fill prescribed by the U. S.
22 Treasury Department, nor maintain or operate within the state
23 any place or places, other than the place or places covered by
24 the manufacturer license, ~~where alcoholic beverages are sold~~
25 ~~or where orders are taken.~~

26 "(c) Each manufacturer licensee shall ~~be required to~~
27 file with the board, prior to making any sales in Alabama a

1 list of its labels to be sold in Alabama and shall file with
2 the board its federal certificate of label approvals or its
3 certificates of exemption as required by the U. S. Treasury
4 Department. All liquors and wines whose labels have not been
5 registered as herein provided for shall be considered
6 contraband and may be seized by the board or its agents, or
7 any peace officer of the State of Alabama without a warrant,l
8 and the goods shall be delivered to the board and disposed of
9 as provided by law.

10 "(d) ~~All such manufacturer licensees shall be~~
11 ~~required to~~ Each licensee shall mail to the board,l prior to
12 the twentieth day of each month,l a consolidated report of all
13 shipments of alcoholic beverages made to each wholesaler
14 during the preceding month. Such reports shall be in such form
15 and containing such information as the board may prescribe.

16 "(e) ~~Every manufacturer~~ Each licensee shall keep at
17 its principal place of business within the state, daily
18 permanent records ~~which shall show~~ showing the quantities of
19 raw materials received and used in the manufacture of
20 alcoholic beverages, and the quantities of alcoholic beverages
21 manufactured and stored, the sale of alcoholic beverages, the
22 quantities of alcoholic beverages stored for hire or
23 transported for hire by or for the licensee,l and the names and
24 addresses of the purchasers or other recipients thereof.

25 "(f) Every place licensed as a manufacturer shall be
26 subject to inspection by members of the board or by persons
27 duly authorized and designated by the board at any ~~and all~~

1 ~~times of the day or night~~ time as they may deem necessary, for
2 the detection of violations of this chapter, of any law, or of
3 the rules ~~and regulations~~ of the board, or for the purpose of
4 ascertaining the correctness of the records required to be
5 kept by the licensees. The books and records of ~~such~~ licensees
6 shall, at all times, be open to inspection by members of the
7 board, or by persons duly authorized and designated by the
8 board. Members of the board and its duly authorized agents
9 shall have the right, without hindrance, to enter any place
10 which is subject to inspection hereunder, or any place where
11 such records are kept for the purpose of making such
12 inspections and making transcripts thereof.

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

17 "(h) (1) A manufacturer licensee actively and
18 continuously engaged in the manufacture of alcoholic beverages
19 on the manufacturer's licensed premises in the state may
20 conduct tastings or samplings on the licensed premises, as
21 regulated by the board except as to quantity and hours of
22 operation, or as otherwise provided by statute, and for that
23 purpose give away or sell alcoholic beverages manufactured
24 there or otherwise manufactured in this state and transferred
25 to the licensed premises directly from another manufacturer
26 that is under common ownership, for consumption on only one
27 premises where manufactured. All alcoholic beverages

1 manufactured and retained on the manufacturer's licensed
2 premises for tasting or sampling shall remain on the premises
3 and be dispensed from a barrel or keg or other original
4 containers. For purposes of this subsection, the amount of
5 beer directly transferred to a manufacturer for tastings,
6 samplings, or retail sale may not exceed the amount of beer
7 manufactured at the receiving manufacturer in a calendar year.

8 "(2) Notwithstanding subdivision (1), a manufacturer
9 licensee engaged in the manufacture of less than 60,000
10 barrels of beer per year may sell at retail on its licensed
11 premises in the state, for off-premises consumption, beer
12 produced at that licensed premises or otherwise manufactured
13 in this state and transferred to the licensed premises
14 directly from another manufacturer that is under common
15 ownership; provided, however, beer sold for off-premises
16 consumption: ~~May~~ may not exceed 288 ounces per customer per
17 day; ~~may not be produced pursuant to a contract with another~~
18 manufacturer; and ~~shall~~ and must be sealed, labeled, packaged,
19 and taxed in accordance with state and federal laws, rules,
20 and regulations. ~~For purposes of this subdivision, beer~~
21 produced by a parent, subsidiary, or affiliate of the
22 licensee, or by a contract brewery, regardless of where the
23 beer is produced, shall be included for purposes of
24 calculating the 60,000 barrel limit.

25 "(3) A manufacturer licensee engaged in the
26 manufacture of liquor on the manufacturer's licensed premises
27 in the state may sell at retail on its licensed premises, for

1 off-premises consumption, liquor manufactured at that licensed
2 premises or otherwise manufactured in this state and
3 transferred to the licensed premises directly from another
4 manufacturer that is under common ownership; provided,
5 however, liquor sold for off-premises consumption may not
6 exceed 2.25 liters per customer per day and ~~shall~~ must be
7 sealed, labeled, packaged, and taxed in accordance with state
8 and federal laws and regulations. The manufacturer licensee
9 shall keep and maintain records for three years of all sales
10 for off-premises consumption.

11 "(4) Notwithstanding subdivision (1), the board may
12 grant a permit allowing a manufacturer licensee engaged in the
13 manufacture of less than 50,000 gallons of table wine per year
14 in the state to establish and operate one additional off-site
15 tasting room to be used to conduct tastings or samplings and
16 to sell at retail the licensee's table wine. The board may
17 also grant a single permit allowing an association
18 representing the majority of wineries and grape growers in the
19 state to establish and operate one off-site tasting room to be
20 used to conduct tastings and samplings and to sell at retail
21 table wines produced by wine manufacturer licensees in the
22 state. An applicant for an off-site tasting room permit shall
23 file a written application with the board in such form and
24 containing such information as the board may prescribe, along
25 with proof of consent and approval from the appropriate
26 governing authority in which the off-site tasting room is to
27 be located and a filing fee of fifty dollars (\$50). All state

1 and federal laws and regulations applicable to on-site tasting
2 rooms shall apply to an off-site tasting room. Wine sold at an
3 off-site tasting room for off-premises consumption may not
4 exceed one case of wine per customer per day. For purposes of
5 this subdivision, one case of wine means the equivalent of
6 twelve 750-milliliter bottles of wine.

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

1 the tax levied by Section 28-7-18; and as an agent for the
2 state for collection and payment of the tax levied by Sections
3 28-3-200 to 28-3-205, inclusive.

4 "(2) The manufacturer licensee shall keep and
5 maintain all records required to be kept and maintained by
6 manufacturer, wholesaler, and retailer licensees for the tax
7 so levied except that manufacturers are not required to
8 maintain name, address, or other personal demographic
9 information for sales as provided in subsection (h).

10 "(j) A manufacturer licensee engaged in the
11 manufacture of beer in the state may donate and deliver up to
12 31 gallons of the manufacturer's beer to a licensed nonprofit
13 special event operated by or on behalf of a nonprofit
14 organization. Donations shall be taxed in accordance with
15 state and federal laws and regulations. Any beer remaining at
16 the conclusion of the nonprofit event shall be returned to the
17 manufacturer for disposal.

18 "(k) A manufacturer licensee engaged in the
19 manufacture of table wine in the state may donate and deliver
20 up to two cases of the manufacturer's table wine to a licensed
21 nonprofit special event operated by or on behalf of a
22 nonprofit organization. Donations shall be taxed in accordance
23 with state and federal laws and regulations. Any table wine
24 remaining at the conclusion of the nonprofit event shall be
25 returned to the manufacturer for disposal."

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.