

1 HB418  
2 128053-1  
3 By Representatives Nordgren, Warren, Coleman, England, Todd,  
4 Mask and Collins  
5 RFD: Economic Development and Tourism  
6 First Read: 31-MAR-11

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8 SYNOPSIS: This bill would provide for the Alabama  
9 Small Winery Business Viability Act to facilitate  
10 the operations of Alabama small wineries as small  
11 businesses and to update operational law relating  
12 to the sale and distribution of wine, wine tasting  
13 events, and wine production among small wineries.

14 The bill would allow small wineries to  
15 self-distribute to retailers up to 24,000 gallons  
16 per year of their wine and allow small wineries to  
17 produce wine for other small wineries.

18 This bill would provide for a license fee  
19 and wine excise tax for small wineries.

20  
21 A BILL

22 TO BE ENTITLED

23 AN ACT

24  
25 To provide for the Alabama Small Winery Business  
26 Viability Act; to facilitate the operations of small wineries  
27 by updating the laws regarding the sale and distribution of

1 wine of small wineries; to provide for the direct sale of  
2 small wineries' wine to retailers of a certain amount of wine  
3 annually; to provide for wine tasting events and Sunday sales  
4 in areas in which Sunday sales are otherwise legal; to provide  
5 for the sale, excise tax collection and delivery of small  
6 wineries' wine in the same manner as wholesalers of wine; and  
7 to amend Sections 28-7-13 and 28-7-18, Code of Alabama 1975,  
8 to provide for a license fee and wine excise tax on small  
9 wineries.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. (a) This act shall be known as the  
12 Alabama Small Winery Business Viability Act.

13 (b) As used in this act, the following terms shall  
14 have the following meanings:

15 (1) AFFILIATE. Any person controlling, controlled  
16 by, or under common control with an Alabama small winery.

17 (2) ALABAMA SMALL WINERY. A manufacturer which is  
18 licensed by the Alcoholic Beverage Control Board to  
19 manufacture wine in Alabama and which includes the following:

20 a. At least one tasting room at the winery and may  
21 include additional remote tasting rooms throughout the state.

22 b. A federally bonded or designated area for in  
23 process storage of bottled wine, labeled or unlabeled, and  
24 receipt, transfer, and storage of bonded wine making materials  
25 in accordance with the laws and regulations of the United  
26 States.

1 c. A manufacturing facility for the fermentation,  
2 aging, blending, and processing of wine in accordance with the  
3 laws and regulations of the United States.

4 d. Preparation of wine for market in original  
5 containers for distribution in accordance with the laws and  
6 regulations of the United States.

7 e. Manufactures less than 100,000 gallons of wine  
8 annually as shown by federal excise tax reporting.

9 (3) BOARD. The Alcoholic Beverage Control Board.

10 (4) COMMISSIONER. The Commissioner of the Alcoholic  
11 Beverage Control Board.

12 (5) LOCAL EVENT AND ATTRACTION LICENSE. As  
13 designated by a local governing body as supporting culture,  
14 heritage, a nonprofit or other local purpose, a license for a  
15 descriptive area and local seasonal event not lasting longer  
16 than one calendar year, renewable, providing for wine tasting,  
17 on-premise and off-premise sales of wine manufactured by a  
18 small winery.

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

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

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

5           (9) SMALL WINERY. A manufacturer producing less than  
6 100,000 gallons of wine annually in this state where the  
7 winery is located as shown by federal excise tax reporting.

8           (10) SMALL WINERY WHOLESALE LICENSE. A license to  
9 sell and deliver 24,000 gallons annually of wine, solely  
10 manufactured by the small winery, to be sold to retail  
11 licensees within the state as lawfully authorized to sell  
12 table wine for the purpose of resale only.

13           (11) TABLE WINE. Except as otherwise provided in  
14 this subdivision, any wine containing not more than 24 percent  
15 alcohol by volume. Table wine does not include any wine  
16 containing more than 16.5 percent alcohol by volume that is  
17 made with herbs or flavors, except vermouth, or is an  
18 imitation or other than standard wine. Table wine is not  
19 liquor, spirituous or vinous.

20           (12) TASTING ROOM. An enclosed permanent outlet for  
21 the promotion of small winery wine by providing samples of  
22 such wine to the public and for the sale of such wine at  
23 retail for consumption on the premises and for sale in  
24 original containers for consumption off the premises.

25           (13) WHOLESALER. Any person licensed by the board to  
26 engage in the sale and distribution of table wine and beer, or  
27 either of them, within this state, at wholesale only, to be

1 sold by export or to retail licensees or other wholesale  
2 licensees or others within this state lawfully authorized to  
3 sell table wine and beer, or either of them, for the purpose  
4 of resale only.

5 (14) WINE. All beverages made from the fermentation  
6 of fruits, berries, or grapes, juices or concentrates with or  
7 without added spirits, and produced in accordance with the  
8 laws and regulations of the United States, containing not more  
9 than 24 percent alcohol by volume, and shall include all  
10 sparkling wines, carbonated wines, special natural wines,  
11 rectified wines, vermouths, vinous beverages, vinous liquors,  
12 and like products, including restored or unrestored condensed  
13 juice.

14 Section 2. (a) The board shall authorize any  
15 licensed small winery to sell up to 24,000 gallons per  
16 calendar year of its wine as prepared in original containers  
17 at wholesale within the state, with the following provisions:

18 (1) This figure excludes all retail sales made by a  
19 small winery from tasting rooms or from licensed local events  
20 or dispensed as samples at these locations.

21 (2) This figure includes samples dispensed while  
22 marketing at wholesale to retailers.

23 (b) A small winery wholesale licensee shall be  
24 regulated in the transport, sales, and record keeping of wine  
25 in original containers as governed by the Alabama laws for  
26 wholesalers.

1 (c) A small winery licensee shall be authorized to  
2 sell, deliver, transport, or ship its wine in bulk or in  
3 bottles, whether labeled or unlabeled in-bond and as provided  
4 by the laws and regulations of the United States, to other  
5 small winery licensees, including tasting rooms and shall be  
6 authorized to acquire, transport, and receive deliveries and  
7 shipments of such wine made by other small winery licensees.

8 (d) An Alabama small winery licensee shall be  
9 authorized, in accordance with rules of the board, to acquire,  
10 transport, and receive in-bond deliveries and shipments of  
11 in-process wine making materials in accordance with the laws  
12 and regulations of the United States.

13 (e) The annual license fees associated with this act  
14 shall be as follows:

15 (1) Small winery license including primary  
16 manufacturing premise, bonded warehouse, and one tasting room,  
17 five hundred dollars (\$500).

18 (2) Additional remote tasting room each, one hundred  
19 fifty dollars (\$150).

20 (3) Small winery wholesale license, seventy-five  
21 dollars (\$75).

22 (4) Out of state wine bulk import license, fifty  
23 dollars (\$50).

24 (5) Local event and attraction license, seventy-five  
25 dollars (\$75).

1 (f) An Alabama small winery shall conduct business  
2 outside the state as allowed by the prevailing laws of that  
3 state.

4 (e) A small winery shall be authorized to transport  
5 its wine, offer wine tastings, and sell wine for on-premise  
6 and off-premise consumption as allowed by local event and  
7 attraction licensed events.

8 Section 3. (a) The board shall authorize any small  
9 winery licensee to receive and to sell the wine of any other  
10 small winery licensee in tax-paid original containers for  
11 on-premises consumption and off-premises consumption.

12 (b) The board may authorize any small winery  
13 licensee to purchase at wholesale tax-paid distilled spirits,  
14 malt beverages, and wines not produced by the winery for  
15 consumption in its tasting rooms and at facilities located on  
16 the premises of the winery or on property located contiguous  
17 to the winery and owned by the winery.

18 (c) No excise tax shall be collected from a small  
19 winery for distilled spirits, malt beverages, and wines  
20 purchased on a tax-paid basis at wholesale by a small winery  
21 for resale.

22 Section 4. (a) An Alabama small winery licensee, in  
23 accordance with rules of the board, may be further licensed to  
24 acquire, transport, and receive deliveries and shipments of  
25 wine in bulk from out-of-state manufacturers and shippers in  
26 an amount not to exceed 30 percent of its annual production,  
27 provided that the Alabama small winery licensee receiving any



1 such shipment or shipments files timely reports with the board  
2 and keeps records of the receipt of such shipment or shipments  
3 as may be required by the board.

4 (b) Any wine received in bulk pursuant to subsection  
5 (a) shall be used for blending or wine manufacture in  
6 accordance with the laws of the United States and if packaged  
7 in original containers for sale in Alabama have levied thereon  
8 the required taxes which shall be reported and remitted to the  
9 board.

10 (c) The annual license tax for each license issued  
11 pursuant to this section to acquire and receive bulk wine  
12 shipments from out-of-state shall be fifty dollars (\$50).

13 Section 5. (a) (1) Notwithstanding any other  
14 provision of Title 28 of the Code of Alabama 1975, to the  
15 contrary, in all counties or municipalities in which the sale  
16 of wine is lawful, the commissioner may authorize any Alabama  
17 small winery licensee to sell its wine and the wine of any  
18 other small winery licensee for consumption on the premises at  
19 facilities located on the premises of the winery or on  
20 property located contiguous to the winery and owned by the  
21 winery or by an affiliate of the winery or in additional  
22 remote tasting rooms.

23 (2) Notwithstanding any other provisions of Title 28  
24 of the Code of Alabama 1975, to the contrary, in all counties  
25 or municipalities in which the sale of distilled spirits, malt  
26 beverages, and wines is lawful, the commissioner may authorize  
27 such licensee to make sales of distilled spirits, malt

1 beverages, and wines not produced by a small winery for  
2 consumption in its tasting rooms and at facilities located on  
3 the premises of the winery or on property located contiguous  
4 to the winery and owned by the winery or by an affiliate of  
5 the winery, provided that any alcoholic beverages sold  
6 pursuant to this subdivision shall be purchased by the winery  
7 from a licensed wholesaler at wholesale prices.

8 (b) Notwithstanding any other provision of Title 28  
9 of the Code of Alabama 1975, to the contrary, in all counties  
10 and municipalities in which the sale of wine is lawful by an  
11 Alabama small winery, an Alabama small winery which is  
12 licensed to sell its wine in a tasting room or other licensed  
13 small winery facility within the county or municipality, as  
14 the case may be, for consumption on the premises or in closed  
15 packages for consumption off the premises, shall be authorized  
16 to sell its wine and the wine of any other Alabama small  
17 winery licensee on Sundays from 12:30 P.M. until 12:00  
18 midnight in the tasting room or other licensed winery facility  
19 to the same extent as its county or municipal license would  
20 otherwise permit. Nothing in this section shall be construed  
21 to authorize a small winery to sell wine on any other premises  
22 which are not actually located on the property of the small  
23 winery, except in small winery tasting rooms, and at local  
24 events or attractions as designated by the local governing  
25 authority of the county or municipality, as applicable.

26 Section 6. Sections 28-7-13 and 28-7-18, Code of  
27 Alabama 1975, are amended to read as follows:

1                   "§28-7-13.

2                   "(a) License fees for licenses issued by the board.  
3                   The following annual license fees are levied and prescribed  
4                   for licenses issued and renewed by the board pursuant to the  
5                   authority contained in this chapter:

6                   "(1) Wine retailer's license, license fee of  
7                   \$150.00.

8                   "(2) Wine wholesaler's license, license fee of  
9                   \$550.00.

10                   "(3) Wine importer's license, license fee of  
11                   \$500.00.

12                   "(4) Wine manufacturer's license, license fee of  
13                   \$500.00.

14                   "(5) Small winery license, license fee five hundred  
15                   dollars (\$500).

16                   "(6) Small winery remote tasting room license,  
17                   license fee one hundred fifty dollars (\$150).

18                   "(7) Small winery wholesale license, license fee  
19                   seventy-five dollars (\$75)

20                   "(8) Small winery bulk import license, license fee  
21                   fifty dollars (\$50).

22                   "(9) Small winery local event and attraction  
23                   license, license fee seventy-five dollars (\$75).

24                   "In addition, the county or municipality therein in which the  
25                   wholesaler, importer or retailer sells or distributes table  
26                   wine may fix a reasonable privilege or license tax on a wine  
27                   wholesaler, importer or retailer located therein, conditioned

1 on a permit or license being issued by the board. Provided,  
2 however, said county or municipality shall levy no license or  
3 privilege tax, or other charge for the privilege of doing  
4 business as a wine wholesaler, importer or retailer, which  
5 shall exceed one-half the amount of the state license fee  
6 levied under the provisions of this section for like  
7 privilege.

8 "(b) Payment, collection and administration. All  
9 license and filing fees levied or authorized by this chapter,  
10 other than those levied by a municipality, shall be paid to  
11 the board. All filing and license fees paid to the board shall  
12 be paid into the State Treasury to the credit of the Beer Tax  
13 and License Fund of the board and each month's receipts shall  
14 be distributed to the State General Fund no later than the end  
15 of the following month. All license fees levied by any county  
16 and paid the board shall be paid not later than the last day  
17 of the month following the month of collection to the county  
18 governing body which shall distribute the proceeds thereof.

19 "§28-7-18.

20 "(a) ~~No~~ Except as provided in the Alabama Small  
21 Winery Act, no manufacturer shall sell any table wine direct  
22 to any retailer or for consumption on the premises where sold,  
23 nor sell or deliver any such ~~table~~ wine in other than original  
24 containers, nor shall any manufacturer maintain or operate  
25 within this state any place or places, other than the place or  
26 places covered by his, her, or its license where ~~table~~ wine is  
27 sold or where orders therefor are taken. Provided, further,

1 that ~~table~~ wine which is manufactured in Alabama may be sold  
2 directly at retail by the licensed manufacturer only on the  
3 manufacturer's premises, for on-premise or off-premise  
4 consumption. Wine produced at an Alabama small winery may be  
5 sold directly to retail wine licensees and remote tasting  
6 rooms as authorized by the Alabama Small Winery Act.

7 "(b) ~~(1)~~ There is hereby levied and assessed, upon  
8 wine manufactured in Alabama and sold by the manufacturer  
9 directly at retail ~~on the premises where it is manufactured~~ or  
10 at wholesale as provided by the Alabama Small Winery Business  
11 Viability Act, or as provided in subsection (a), or dispensed,  
12 as free samples of not more than six ounces, in the tasting  
13 room ~~or wine cellar on the manufacturer's premises,~~ an excise  
14 tax, measured by and graduated in accordance with the volume  
15 of such wine sold or dispensed, in an amount ~~equal to~~  
16 ~~forty-five cents (\$.45) per liter~~ and manner as described by  
17 Section 28-7-16 where the manufacturer or small winery shall  
18 be construed and represented by the term board to describe the  
19 amount, method, and manner of wine excise tax to be collected.

20 "~~(2)~~ ~~The tax hereby levied on retail sales on a~~  
21 ~~manufacturer's premises shall be added to the sales price of~~  
22 ~~all table wine sold at retail by the manufacturer, as provided~~  
23 ~~in subsection (a), and shall be collected from the consumers~~  
24 ~~making the purchases.~~

25 "(c) ~~The tax levied by subsection (b) shall be~~  
26 ~~collected by a return and remitted, monthly, as follows:~~

1           ~~"(1) Not later than the fifteenth day of the month~~  
2           ~~following the month in which table wine was dispensed as free~~  
3           ~~samples or sold at retail as provided in subsection (a), the~~  
4           ~~manufacturer shall file with the board, on a form and in the~~  
5           ~~manner prescribed by the board, a return showing taxes due at~~  
6           ~~thirty-eight cents (\$.38) per liter of the table wine~~  
7           ~~dispensed or sold at retail during the previous month; the~~  
8           ~~taxes due at such rate shall be remitted to the board along~~  
9           ~~with the return.~~

10           ~~"(2) Not later than the fifteenth day of the month~~  
11           ~~following the month in which table wine was dispensed as free~~  
12           ~~samples or sold at retail as provided in subsection (a), the~~  
13           ~~manufacturer shall file with the municipality within which the~~  
14           ~~table wine was dispensed or sold at retail within its~~  
15           ~~corporate limits, or, where dispensed or sold at retail~~  
16           ~~outside of the corporate limits of any municipality, with the~~  
17           ~~county within which the table wine was dispensed or sold at~~  
18           ~~retail, a return showing taxes at seven cents (\$.07) per liter~~  
19           ~~of the table wine dispensed or sold at retail during the~~  
20           ~~previous month; the taxes due at such rate shall be remitted~~  
21           ~~to the county or municipality along with the return.~~

22           ~~"(3) All taxes imposed, levied, and collected under~~  
23           ~~this section shall be deposited and credited in the same~~  
24           ~~manner as are other table wine taxes.~~

25           ~~"(d) (c) Manufacturers who manufacture table wine~~  
26           ~~within Alabama shall provide to the board monthly reports, in~~  
27           ~~the form, time, and manner prescribed by the board, reporting~~

1 gallonage sold and gallonage exported for sale outside the  
2 state during the previous month. In addition, all  
3 manufacturers who manufacture table wine in Alabama shall  
4 include a copy of those operation reports as required by the  
5 federal government in the period filed.

6 "~~(e)~~(d) The tax herein levied is exclusive and shall  
7 be in lieu of all other and additional taxes of the state,  
8 county, and municipality imposed on or measured by the sale or  
9 volume of sale of table wine; provided that nothing herein  
10 contained shall be construed to exempt the retail sale of  
11 table wine from the levy of tax on general retail sales by the  
12 state, county, or municipality in the nature of, or in lieu  
13 of, a general sales tax."

14 Section 7. To the extent that any conflict exists  
15 between this act and the current provisions of Title 28, Code  
16 of Alabama 1975, or administrative rules of the Alcoholic  
17 Beverage Control Board, this act shall supersede any existing  
18 conflicting statutes or administrative rules.

19 Section 8. This act shall become effective on the  
20 first day of the third month following its passage and  
21 approval by the Governor, or its otherwise becoming law.