

2
3 HOUSE ECONOMIC DEVELOPMENT & TOURISM COMMITTEE SUBSTITUTE FOR
4 SB404

5
6
7
8
9 SYNOPSIS: Under existing law, a manufacturer of
10 alcoholic beverages, regardless of the amount of
11 product produced by that manufacturer, may not have
12 a financial interest in a brewpub under certain
13 conditions.

14 This bill would permit a small manufacturer
15 of beer to have a financial interest in a brewpub,
16 but would only permit the transfer of alcoholic
17 beverages from the manufacturer to the brewpub
18 through a wholesaler.

19 Under existing law, breweries and brewpubs
20 are subject to a privilege or excise tax on beer
21 dispensed for retail sale.

22 This bill would provide that the privilege
23 or excise tax on beer is levied at the time the
24 beer is allocated by the brewery or brewpub for the
25 purpose of retail sale before being dispensed for
26 consumption.

1 A BILL
2 TO BE ENTITLED
3 AN ACT
4

5 Relating to alcoholic beverages; to amend Section
6 28-4A-3, Code of Alabama 1975; to permit a small manufacturer
7 of beer to have a financial interest in a brewpub under
8 certain conditions; and to amend Sections 28-3A-6, as last
9 amended by Act 2018-447, 2018 Regular Session, and 28-4A-4,
10 Code of Alabama 1975; to provide that the privilege or excise
11 tax on beer is levied at the time the beer is allocated by the
12 brewery or brewpub for the purpose of retail sale before being
13 dispensed for consumption.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Section 28-4A-3, Code of Alabama 1975, is
16 amended to read as follows:

17 "§28-4A-3.

18 "(a) In addition to the licenses authorized to be
19 issued and renewed by the board pursuant to the Alcoholic
20 Beverage Licensing Code codified as Chapter 3A of this title,
21 the board, upon applicant's compliance with ~~the provisions of~~
22 this chapter, and with Chapter 3A and the regulations made
23 rules adopted thereunder, and the conditions set forth in
24 subsection (b), is authorized to may issue to a qualified
25 applicant a brewpub license which shall authorize the licensee
26 to ~~manufacture~~ do all of the following:

1 "(1) Manufacture or brew beer, in a quantity not to
2 exceed 10,000 barrels in any one year and to sell beer brewed
3 on the licensed premises in unpackaged form at retail for
4 on-premises consumption at the licensed premises only.~~;~~~~to~~
5 ~~sell~~

6 "(2) Sell beer brewed on the licensed premises in
7 packaged form at retail for off-premises consumption, provided
8 the beer sold for off-premises consumption may not exceed 288
9 ounces per customer per day and shall be sealed, labeled,
10 packaged, and taxed in accordance with state and federal laws
11 and regulations.~~;~~~~to sell~~

12 "(3) Sell beer brewed on the premises in original,
13 unopened barrel or keg containers to any licensed wholesaler
14 designated by a brewpub licensee pursuant to Sections 28-8-2
15 and 28-9-3 for resale to retail licensees.~~;~~~~to donate~~

16 "(4) Donate and deliver up to two kegs of the
17 licensee's beer to a licensed charitable special event
18 operated by or on behalf of a nonprofit organization;
19 provided, however, donations shall be taxed in accordance with
20 state and federal laws and regulations, and any beer remaining
21 at the conclusion of the charitable event shall be returned to
22 the manufacturer for disposal.~~;~~~~and to purchase~~

23 "(5) Purchase beer, including draft or keg beer, in
24 original, unopened containers from licensed wholesalers and to
25 sell such beer at retail for on-premises consumption only, in
26 a room or rooms or place on the licensed premises at all times

1 accessible to the use and accommodation of the general
2 public.7

3 "(b) A brewpub is subject to all of the following
4 conditions:

5 "(1) The proposed location of the premises shall
6 not, at the time of the original application, be prohibited by
7 a valid zoning ordinance or other ordinance in the valid
8 exercise of police power by the governing body of the
9 municipality or county in which the brewpub is located.

10 "(2) Beer brewed by the brewpub licensee shall be
11 packaged or contained in barrels from which the beer is to be
12 dispensed only on the premises where brewed for consumption on
13 the premises or sold in original, unopened barrel or keg
14 containers to any designated wholesaler licensee for resale to
15 retailer licensees.

16 "(3) The brewpub must contain and operate a
17 restaurant or otherwise provide food for consumption on the
18 premises.

19 "(4) The brewpub may not sell any alcoholic
20 beverages if it is not actively and continuously engaged in
21 the manufacture or brewing of alcoholic beverages on the
22 brewpub's licensed premises.

23 "~~(b)~~ (c) The annual license fee levied and prescribed
24 for a license as a brewpub issued or renewed by the board
25 ~~pursuant to the authority of this chapter~~ is one thousand
26 dollars (\$1,000).

1 "(d) A manufacturer that sells, on an annual basis,
2 an amount equal to no more than 60,000 barrels of beer, may
3 have a financial interest in a brewpub, including a brewpub
4 that also has a restaurant retail license, provided the
5 manufacturer may not transfer alcoholic beverages directly
6 from the manufacturer to the brewpub but may purchase
7 alcoholic beverages from an authorized wholesaler or as
8 otherwise provided by law, and may not have a financial
9 interest in any retailer other than a brewpub.

10 ~~"(c)(e) Except as provided in this subsection, the~~
11 ~~provisions of this title shall be applicable. The provisions~~
12 ~~of Section 28-3-4 and subsection (b) of Section 28-3A-6, shall~~
13 ~~not be applicable with regard to beer brewed by the brewpub~~
14 ~~either of the following and sold and dispensed on the brewpub~~
15 ~~premises: In all other respects, Section 28-3-4, Section~~
16 ~~28-3A-6(b), and Section 28-3A-6(i)(2) shall be applicable.~~

17 "(1) The brewpub.

18 "(2) A manufacturer described in, and in compliance
19 with, subsection (d)."

20 Section 2. Sections 28-3A-6, as last amended by Act
21 2018-447, 2018 Regular Session, and 28-4A-4, Code of Alabama
22 1975, are amended to read as follows:

23 "§28-3A-6.

24 "(a) Upon applicant's compliance with the provisions
25 of this chapter and the regulations made thereunder, the board
26 shall issue to applicant a manufacturer license which shall
27 authorize the licensee to manufacture or otherwise distill,

1 produce, ferment, brew, bottle, rectify, or compound alcoholic
2 beverages within this state or for sale or distribution within
3 this state. No person shall manufacture or otherwise distill,
4 produce, ferment, brew, bottle, rectify or compound alcoholic
5 beverages within this state or for sale or distribution within
6 this state or to the state, the board, or any licensee of the
7 board, unless such person or the authorized representative of
8 the person shall be granted a manufacturer license issued by
9 the board.

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

20 "(c) Each manufacturer licensee shall be required to
21 file with the board, prior to making any sales in Alabama a
22 list of its labels to be sold in Alabama and shall file with
23 the board its federal certificate of label approvals or its
24 certificates of exemption as required by the U. S. Treasury
25 Department. All liquors and wines whose labels have not been
26 registered as herein provided for shall be considered
27 contraband and may be seized by the board or its agents, or

1 any peace officer of the State of Alabama without a warrant
2 and the goods shall be delivered to the board and disposed of
3 as provided by law.

4 "(d) All such manufacturer licensees shall be
5 required to mail to the board prior to the twentieth day of
6 each month a consolidated report of all shipments of alcoholic
7 beverages made to each wholesaler during the preceding month.
8 Such reports shall be in such form and containing such
9 information as the board may prescribe.

10 "(e) Every manufacturer shall keep at its principal
11 place of business within the state, daily permanent records
12 which shall show the quantities of raw materials received and
13 used in the manufacture of alcoholic beverages, and the
14 quantities of alcoholic beverages manufactured and stored, the
15 sale of alcoholic beverages, the quantities of alcoholic
16 beverages stored for hire or transported for hire by or for
17 the licensee and the names and addresses of the purchasers or
18 other recipients thereof.

19 "(f) Every place licensed as a manufacturer shall be
20 subject to inspection by members of the board or by persons
21 duly authorized and designated by the board at any and all
22 times of the day or night as they may deem necessary, for the
23 detection of violations of this chapter, of any law, or of the
24 rules and regulations of the board, or for the purpose of
25 ascertaining the correctness of the records required to be
26 kept by the licensees. The books and records of such licensees
27 shall, at all times, be open to inspection by members of the

1 board, or by persons duly authorized and designated by the
2 board. Members of the board and its duly authorized agents
3 shall have the right, without hindrance, to enter any place
4 which is subject to inspection hereunder, or any place where
5 such records are kept for the purpose of making such
6 inspections and making transcripts thereof.

7 "(g) Licenses issued under this section shall,
8 unless revoked in the manner provided in this chapter, be
9 valid for the license year commencing January 1 of each year.

10 "(h) (1) A manufacturer licensee actively and
11 continuously engaged in the manufacture of alcoholic beverages
12 on the manufacturer's licensed premises in the state may
13 conduct tastings or samplings on the licensed premises, as
14 regulated by the board except as to quantity and hours of
15 operation, or as otherwise provided by statute, and for that
16 purpose give away or sell alcoholic beverages manufactured
17 there for consumption on only one premises where manufactured.
18 All alcoholic beverages manufactured and retained on the
19 manufacturer's licensed premises for tasting or sampling shall
20 remain on the premises and be dispensed from a barrel or keg
21 or other original containers.

22 "(2) Notwithstanding subdivision (1), a manufacturer
23 licensee engaged in the manufacture of less than 60,000
24 barrels of beer per year may sell at retail on its licensed
25 premises in the state, for off-premises consumption, beer
26 produced at that licensed premises; provided, however, beer
27 sold for off-premises consumption: May not exceed 288 ounces

1 per customer per day; may not be produced pursuant to a
2 contract with another manufacturer; and shall be sealed,
3 labeled, packaged, and taxed in accordance with state and
4 federal laws and regulations. For purposes of this
5 subdivision, beer produced by a parent, subsidiary, or
6 affiliate of the licensee, or by a contract brewery,
7 regardless of where the beer is produced, shall be included
8 for purposes of calculating the 60,000 barrel limit.

9 "(3) A manufacturer licensee engaged in the
10 manufacture of liquor on the manufacturer's licensed premises
11 in the state may sell at retail on its licensed premises, for
12 off-premises consumption, liquor manufactured at that licensed
13 premises; provided, however, liquor sold for off-premises
14 consumption may not exceed 2.25 liters per customer per day
15 and shall be sealed, labeled, packaged, and taxed in
16 accordance with state and federal laws and regulations. The
17 manufacturer licensee shall keep and maintain records for
18 three years of all sales for off-premises consumption.

19 "(4) Notwithstanding subdivision (1), the board may
20 grant a permit allowing a manufacturer licensee engaged in the
21 manufacture of less than 50,000 gallons of table wine per year
22 in the state to establish and operate one additional off-site
23 tasting room to be used to conduct tastings or samplings and
24 to sell at retail the licensee's table wine. The board may
25 also grant a single permit allowing an association
26 representing the majority of wineries and grape growers in the
27 state to establish and operate one off-site tasting room to be

1 used to conduct tastings and samplings and to sell at retail
2 table wines produced by wine manufacturer licensees in the
3 state. An applicant for an off-site tasting room permit shall
4 file a written application with the board in such form and
5 containing such information as the board may prescribe, along
6 with proof of consent and approval from the appropriate
7 governing authority in which the off-site tasting room is to
8 be located and a filing fee of fifty dollars (\$50). All state
9 and federal laws and regulations applicable to on-site tasting
10 rooms shall apply to an off-site tasting room. Wine sold at an
11 off-site tasting room for off-premises consumption may not
12 exceed one case of wine per customer per day. For purposes of
13 this subdivision, one case of wine means the equivalent of
14 twelve 750-milliliter bottles of wine.

15 "(i) (1) In addition to the licenses provided for by
16 Chapter 3A of this title, and any county or municipal license,
17 there is levied on the manufacturer of the alcoholic beverages
18 dispensed on the premises the privilege or excise tax imposed
19 on beer by Sections 28-3-184 and 28-3-190; and imposed on
20 table wine by Section 28-7-18; and imposed on liquor by
21 Sections 28-3-200 to 28-3-205, inclusive. Taxes on beer shall
22 be levied at the time the beer is allocated by the beer
23 manufacturer for the purpose of retail sale and not at the
24 time the beer is dispensed for consumption. Every manufacturer
25 licensee shall file the tax returns, pay the taxes, and
26 perform all obligations imposed on wholesalers at the times
27 and places set forth therein. It shall be unlawful for any

1 manufacturer licensee who is required to pay the taxes so
2 imposed in the first instance to fail or refuse to add to the
3 sale price and collect from the purchaser the required amount
4 of tax, it being the intent and purpose of this provision that
5 each of the taxes levied is in fact a tax on the consumer,
6 with the manufacturer licensee who pays the tax in the first
7 instance acting merely as an agent of the state for the
8 collection and payment of the tax levied by Section 28-3-184;
9 as an agent for the county or municipality for the collection
10 and payment of the tax levied by Section 28-3-190; as an agent
11 for the county or municipality for collection and payment of
12 the tax levied by Section 28-7-18; and as an agent for the
13 state for collection and payment of the tax levied by Sections
14 28-3-200 to 28-3-205, inclusive.

15 "(2) The manufacturer licensee shall keep and
16 maintain all records required to be kept and maintained by
17 manufacturer, wholesaler, and retailer licensees for the tax
18 so levied except that manufacturers are not required to
19 maintain name, address, or other personal demographic
20 information for sales as provided in subsection (h).

21 "(j) A manufacturer licensee engaged in the
22 manufacture of beer in the state may donate and deliver up to
23 31 gallons of the manufacturer's beer to a licensed nonprofit
24 special event operated by or on behalf of a nonprofit
25 organization. Donations shall be taxed in accordance with
26 state and federal laws and regulations. Any beer remaining at

1 the conclusion of the nonprofit event shall be returned to the
2 manufacturer for disposal.

3 "(k) A manufacturer licensee engaged in the
4 manufacture of table wine in the state may donate and deliver
5 up to two cases of the manufacturer's table wine to a licensed
6 nonprofit special event operated by or on behalf of a
7 nonprofit organization. Donations shall be taxed in accordance
8 with state and federal laws and regulations. Any table wine
9 remaining at the conclusion of the nonprofit event shall be
10 returned to the manufacturer for disposal.

11 "§28-4A-4.

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

1 county or municipality for the collection and payment of the
2 tax levied by Section 28-3-190. Taxes on beer shall be levied
3 at the time the beer is allocated for the purpose of retail
4 sale and not at the time the beer is dispensed for
5 consumption.

6 "(b) The brewpub shall be required to keep and
7 maintain all of the records otherwise required to be kept and
8 maintained by manufacturer, wholesaler, and retailer
9 licensees.

10 "(c) The brewpub shall appoint a licensed wholesaler
11 designee in order to preserve Section 28-9-1. In addition, for
12 on-premises sales of beer brewed by the brewpub licensee, the
13 brewpub shall be exempt from Sections 28-9-3 through 28-9-11."

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