HB494

199664-1

By Representative Nordgren

RFD: Economic Development and Tourism

First Read: 23-APR-19
SYNOPSIS: Under existing law, breweries and brewpubs are subject to a privilege or excise tax on beer dispensed for retail sale.

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

A BILL
TO BE ENTITLED
AN ACT

Relating to alcoholic beverages; to amend Sections 28-3A-6, as last amended by Act 2018-447, 2018 Regular Session, and 28-4A-4, Code of Alabama 1975; to provide that the privilege or excise tax on beer is levied at the time the beer is allocated by the brewery or brewpub for the purpose of retail sale before being dispensed for consumption.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
Section 1. Sections 28-3A-6, as last amended by Act 2018-447, 2018 Regular Session, and 28-4A-4, Code of Alabama 1975, are amended to read as follows:

"§28-3A-6.

"(a) Upon applicant's compliance with the provisions of this chapter and the regulations made thereunder, the board shall issue to applicant a manufacturer license which shall authorize the licensee to manufacture or otherwise distill, produce, ferment, brew, bottle, rectify, or compound alcoholic beverages within this state or for sale or distribution within this state. No person shall manufacture or otherwise distill, produce, ferment, brew, bottle, rectify or compound alcoholic beverages within this state or for sale or distribution within this state or to the state, the board, or any licensee of the board, unless such person or the authorized representative of the person shall be granted a manufacturer license issued by the board.

"(b) No manufacturer licensee shall sell any alcoholic beverages direct to any retailer or for consumption on the premises where sold except as specified under subsection (h), nor sell or deliver any such alcoholic beverages in other than original containers approved as to capacity by the board and in accordance with standards of fill prescribed by the U. S. Treasury Department, nor maintain or operate within the state any place or places, other than the place or places covered by the manufacturer license, where alcoholic beverages are sold or where orders are taken.
"(c) Each manufacturer licensee shall be required to file with the board, prior to making any sales in Alabama a list of its labels to be sold in Alabama and shall file with the board its federal certificate of label approvals or its certificates of exemption as required by the U. S. Treasury Department. All liquors and wines whose labels have not been registered as herein provided for shall be considered contraband and may be seized by the board or its agents, or any peace officer of the State of Alabama without a warrant and the goods shall be delivered to the board and disposed of as provided by law.

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

"(e) Every manufacturer shall keep at its principal place of business within the state, daily permanent records which shall show the quantities of raw materials received and used in the manufacture of alcoholic beverages, and the quantities of alcoholic beverages manufactured and stored, the sale of alcoholic beverages, the quantities of alcoholic beverages stored for hire or transported for hire by or for the licensee and the names and addresses of the purchasers or other recipients thereof.
(f) Every place licensed as a manufacturer shall be subject to inspection by members of the board or by persons duly authorized and designated by the board at any and all times of the day or night as they may deem necessary, for the detection of violations of this chapter, of any law, or of the rules and regulations of the board, or for the purpose of ascertaining the correctness of the records required to be kept by the licensees. The books and records of such licensees shall, at all times, be open to inspection by members of the board, or by persons duly authorized and designated by the board. Members of the board and its duly authorized agents shall have the right, without hindrance, to enter any place which is subject to inspection hereunder, or any place where such records are kept for the purpose of making such inspections and making transcripts thereof.

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

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

"(2) Notwithstanding subdivision (1), a manufacturer licensee engaged in the manufacture of less than 60,000 barrels of beer per year may sell at retail on its licensed premises in the state, for off-premises consumption, beer produced at that licensed premises; provided, however, beer sold for off-premises consumption: May not exceed 288 ounces per customer per day; may not be produced pursuant to a contract with another manufacturer; and shall be sealed, labeled, packaged, and taxed in accordance with state and federal laws and regulations. For purposes of this subdivision, beer produced by a parent, subsidiary, or affiliate of the licensee, or by a contract brewery, regardless of where the beer is produced, shall be included for purposes of calculating the 60,000 barrel limit.

"(3) A manufacturer licensee engaged in the manufacture of liquor on the manufacturer's licensed premises in the state may sell at retail on its licensed premises, for off-premises consumption, liquor manufactured at that licensed premises; provided, however, liquor sold for off-premises consumption may not exceed 2.25 liters per customer per day and shall be sealed, labeled, packaged, and taxed in accordance with state and federal laws and regulations. The manufacturer licensee shall keep and maintain records for three years of all sales for off-premises consumption.
(4) Notwithstanding subdivision (1), the board may grant a permit allowing a manufacturer licensee engaged in the manufacture of less than 50,000 gallons of table wine per year in the state to establish and operate one additional off-site tasting room to be used to conduct tastings or samplings and to sell at retail the licensee's table wine. The board may also grant a single permit allowing an association representing the majority of wineries and grape growers in the state to establish and operate one off-site tasting room to be used to conduct tastings and samplings and to sell at retail table wines produced by wine manufacturer licensees in the state. An applicant for an off-site tasting room permit shall file a written application with the board in such form and containing such information as the board may prescribe, along with proof of consent and approval from the appropriate governing authority in which the off-site tasting room is to be located and a filing fee of fifty dollars ($50). All state and federal laws and regulations applicable to on-site tasting rooms shall apply to an off-site tasting room. Wine sold at an off-site tasting room for off-premises consumption may not exceed one case of wine per customer per day. For purposes of this subdivision, one case of wine means the equivalent of twelve 750-milliliter bottles of wine.

(i)(1) In addition to the licenses provided for by Chapter 3A of this title, and any county or municipal license, there is levied on the manufacturer of the alcoholic beverages dispensed on the premises the privilege or excise tax imposed
on beer by Sections 28-3-184 and 28-3-190; and imposed on

table wine by Section 28-7-18; and imposed on liquor by

Sections 28-3-200 to 28-3-205, inclusive. **Taxes on beer shall**

be levied at the time the beer is allocated by the beer

manufacturer for the purpose of retail sale and not at the

time the beer is dispensed for consumption. Every manufacturer

licensee shall file the tax returns, pay the taxes, and

perform all obligations imposed on wholesalers at the times

and places set forth therein. It shall be unlawful for any

manufacturer licensee who is required to pay the taxes so

imposed in the first instance to fail or refuse to add to the

sale price and collect from the purchaser the required amount

of tax, it being the intent and purpose of this provision that

each of the taxes levied is in fact a tax on the consumer,

with the manufacturer licensee who pays the tax in the first

instance acting merely as an agent of the state for the

collection and payment of the tax levied by Section 28-3-184;

as an agent for the county or municipality for the collection

and payment of the tax levied by Section 28-3-190; as an agent

for the county or municipality for collection and payment of

the tax levied by Section 28-7-18; and as an agent for the

state for collection and payment of the tax levied by Sections

28-3-200 to 28-3-205, inclusive.

"(2) The manufacturer licensee shall keep and

maintain all records required to be kept and maintained by

manufacturer, wholesaler, and retailer licensees for the tax

so levied except that manufacturers are not required to
maintain name, address, or other personal demographic information for sales as provided in subsection (h).

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

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

"§28-4A-4.

"(a) In addition to the licenses provided for by this chapter and any county or municipal license, there is levied on the brewpub for on-premises sales of beer brewed by the brewpub licensee the privilege or excise taxes imposed by Sections 28-3-184 and 28-3-190. Every brewpub licensee shall file the tax returns, pay the taxes and perform all obligations imposed on wholesalers at the times and places set forth therein. It shall be unlawful for any brewpub licensee
who is required to pay the taxes so imposed in the first instance to fail or refuse to add to the sales price and collect from the purchaser the required amount of tax, it being the intent and purpose of this provision that each of the taxes levied is in fact a tax on the consumer, with the brewpub licensee who pays the tax in the first instance acting merely as an agent of the state for the collection and payment of the tax levied by Section 28-3-184 and as an agent of the county or municipality for the collection and payment of the tax levied by Section 28-3-190. **Taxes on beer shall be levied at the time the beer is allocated for the purpose of retail sale and not at the time the beer is dispensed for consumption.**

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

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

Section 2. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.