HB542

200451-1

By Representative Nordgren

RFD: Economic Development and Tourism

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§28-3-1.

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

"(1) ALCOHOLIC BEVERAGES. Any alcoholic, spirituous, vinous, fermented, or other alcoholic beverage, or combination of liquors and mixed liquor, a part of which is spirituous, vinous, fermented, or otherwise alcoholic, and all drinks or drinkable liquids, preparations or mixtures intended for beverage purposes, which contain one-half of one percent or more of alcohol by volume, and shall include liquor, beer, and wine.

"(2) ASSOCIATION. A partnership, limited partnership, or any form of unincorporated enterprise owned by two or more persons.

"(3) BEER, or MALT OR BREWED BEVERAGES. Except as otherwise provided in this subdivision, any beer, lager beer, ale, porter, malt or brewed beverage, or similar fermented malt liquor containing one-half of one percent or more of alcohol by volume and not in excess of thirteen and
nine-tenths percent by volume, by whatever name the same may be called.

"(4) BOARD. The Alcoholic Beverage Control Board.

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

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

"(7) BREWERY. A manufacturer of beer.

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

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

"(9)(10) CLUB.

"a. Class I. A corporation or association organized or formed in good faith by authority of law and which must have at least 150 paid-up members. It must be the owner,
lessee, or occupant of an establishment operated solely for
the objects of a national, social, patriotic, political, or
athletic nature or the like, but not for pecuniary gain, and
the property as well as the advantages of which, belong to all
the members and which maintains an establishment provided with
special space and accommodations where, in consideration of
payment, food with or without lodging is habitually served.
The club shall hold regular meetings, continue its business
through officers regularly elected, admit members by written
application, investigation, and ballot and charge and collect
dues from elected members.

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

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

"(12) CONTAINER. The single bottle, can, keg,
bag, or other receptacle, not a carton, in which alcoholic
beverages are originally packaged for the market by the
brewpub, manufacturer, or importer and from which the alcoholic beverage is consumed by or dispensed to the public.

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

"(14) DISTILLERY. A manufacturer of liquor.

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

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

"(13) (17) GENERAL WELFARE PURPOSES.
"a. The administration of public assistance as set out in Sections 38-2-5 and 38-4-1;

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

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

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

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

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

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

"(17)-(21) KEG. A pressurized factory sealed container with a capacity equal to or greater than five US gallons, from which beer is withdrawn by means of an external tap.
"(18)(22) LIQUOR. Any alcoholic, spirituous, vinous, fermented, or other alcoholic beverage, or combination of liquors and mixed liquor, a part of which is spirituous, fermented, vinous or otherwise alcoholic, and all drinks or drinkable liquids, preparations or mixtures intended for beverage purposes, which contain one-half of one percent or more of alcohol by volume, except beer and table wine.

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

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

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

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

"(23)(27) MINOR. Any person under 21 years of age; provided, however, in the event Section 28-1-5 shall be repealed or otherwise shall be no longer in effect, thereafter the provisions of Section 26-1-1 shall govern.
"(24)(28) MUNICIPALITY. Any incorporated city or
town of this state to include its police jurisdiction.

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

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

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

"(28)(32) RETAILER. Any person licensed by the board
to engage in the retail sale of any alcoholic beverages to the
consumer.
"(33)(37) SALE or SELL. Any transfer of liquor, wine, or beer for a consideration, and any gift in connection with, or as a part of, a transfer of property other than liquor, wine, or beer for a consideration.

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

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

"(36)(40) UNOPENED CONTAINER. A container containing alcoholic beverages, which has not been opened or unsealed subsequent to filling and sealing by the manufacturer or importer.

"(37)(41) WET COUNTY. Any county which by a majority of those voting voted in the affirmative in an election heretofore held in accordance with the statutes applicable at the time of the election or may hereafter vote in the affirmative in an election or special method referendum held in accordance with the provisions of Chapter 2 of this title, or other statutes applicable at the time of the election.

"(38)(42) WET MUNICIPALITY. Any municipality in a dry county which by a majority of those voting voted in the
affirmative in a municipal option election heretofore or
hereafter held in accordance with the provisions of Act
84-408, Acts of Alabama 1984, appearing as Chapter 2A of this
title, as amended, or any act hereafter enacted permitting
municipal option election, or any municipality which became
wet by vote of the governing body or by the voters of the
municipality heretofore or hereafter held under the special
method referendum provisions of Section 28-2-22, or as
hereafter provided, where the county has become dry subsequent
to the elected wet status of the municipality.

"(35)(39) WHOLESALER. Any person licensed by the
board to engage in the sale and distribution of table wine and
beer, or either of them, within this state, at wholesale only,
to be sold by export or to retail licensees or other wholesale
licensees or others within this state lawfully authorized to
sell table wine and beer, or either of them, for the purpose
of resale only.

"(36)(40) WINE. All beverages made from the
fermentation of fruits, berries, or grapes, with or without
added spirits, and produced in accordance with the laws and
regulations of the United States, containing not more than 24
percent alcohol by volume, and shall include all sparkling
wines, carbonated wines, special natural wines, rectified
wines, vermouths, vinous beverages, vinous liquors, and like
products, including restored or unrestored pure condensed
juice.

"(41) WINERY. A manufacturer of table wine.
"§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 Each licensee shall 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 Each licensee 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, shall
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 or otherwise manufactured in this state and transferred
to the licensed premises directly from another manufacturer
that is under common ownership, 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. For purposes of this subsection, the amount of beer directly transferred to a manufacturer for tastings, samplings, or retail sale may not exceed the amount of beer manufactured at the receiving manufacturer in a calendar year.

"(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 or otherwise manufactured in this state and transferred to the licensed premises directly from another manufacturer that is under common ownership; 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 and must be sealed, labeled, packaged, and taxed in accordance with state and federal laws, rules, 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 or otherwise manufactured in this state and transferred to the licensed premises directly from another manufacturer that is under common ownership; provided, however, liquor sold for off-premises consumption may not exceed 2.25 liters per customer per day and shall must 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. 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."
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.