SB404

201605-4

By Senators Smitherman and Waggoner

RFD: Tourism

First Read: 14-MAY-19
ENROLLED, An Act,

Relating to alcoholic beverages; to amend Section 28-4A-3, Code of Alabama 1975; to permit a small manufacturer of beer to have a financial interest in a brewpub under certain conditions; and 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. Section 28-4A-3, Code of Alabama 1975, is amended to read as follows:

"§28-4A-3.

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

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

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

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

"(4) Donate and deliver up to two kegs of the licensee's beer to a licensed charitable special event operated by or on behalf of a nonprofit organization; provided, however, donations shall be taxed in accordance with state and federal laws and regulations, and any beer remaining at the conclusion of the charitable event shall be returned to the manufacturer for disposal; and to purchase
"(5) Purchase beer, including draft or keg beer, in original, unopened containers from licensed wholesalers and to sell such beer at retail for on-premises consumption only, in a room or rooms or place on the licensed premises at all times accessible to the use and accommodation of the general public.

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

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

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

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

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

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

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

"(e) Except as provided in this subsection, the provisions of this title shall be applicable. The provisions of Section 28-3-4 and subsection (b) of Section 28-3A-6, shall not be applicable with regard to beer brewed by the brewpub either of the following and sold and dispensed on the brewpub premises: In all other respects, Section 28-3-4, Section 28-3A-6(b), and Section 28-3A-6(1)(2) shall be applicable.

"(1) The brewpub.

"(2) A manufacturer described in, and in compliance with, subsection (d)."
Section 2. 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 3. 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.
President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB404
Senate 16-MAY-19
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Amended and passed 28-MAY-19

Senate concurred in House amendment 29-MAY-19

By: Senator Smitherman