

1 SB77
2 197385-1
3 By Senator Orr
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 05-MAR-19

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8 SYNOPSIS: Under existing law, liquor wholesale
9 licensees may sell liquor at wholesale to the
10 Alabama Alcoholic Beverage Control Board or as
11 authorized by the board, but not other than to a
12 retail licensee of the board. Under existing law,
13 state liquor stores operated by the Alabama
14 Alcoholic Beverage Control Board and certain
15 licensed private retail stores may sell liquor at
16 retail. Under existing law, retail licensees of the
17 board must purchase liquor from the board for
18 resale.

19 This bill would require the Alabama
20 Alcoholic Beverage Control Board to adopt, amend,
21 or repeal rules as necessary to phase out the
22 retail sale of alcoholic beverages by the board
23 prior to October 1, 2024, but continue all other
24 functions prescribed by law.

25 This bill would provide for the markup on
26 all alcohol sold by the board; provide for the
27 distribution of proceeds; and provide that liquor

1 sold by the board shall be subject to existing
2 taxes.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

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8 To amend Sections 28-3-43, 28-3-53.1, and 28-3-53.2,
9 of the Code of Alabama 1975, regarding the sale of alcoholic
10 beverages and the Alabama Alcoholic Beverage Control Board; to
11 require the Alabama Alcoholic Beverage Control Board to adopt,
12 amend, or repeal rules as necessary to phase out operations
13 concerning the retail sale of alcoholic beverages prior to
14 October 1, 2024; to grant certain powers to the board to
15 facilitate the phase-out process; to provide that certain
16 existing retail licensees of the board may continue to sell
17 liquor for off-premises consumption and prohibiting the sale
18 or transfer of these licenses; to provide for the markup on
19 alcohol sales and the distribution of proceeds; to specify the
20 remaining functions of the board; and repeal Sections 28-3-280
21 through 28-3-286 of the Code of Alabama 1975.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. In addition to all other powers and
24 duties granted in Title 28, Code of Alabama 1975, the Alabama
25 Alcoholic Beverage Control Board shall adopt, amend, or repeal
26 rules of the board as necessary to phase out the retail sale
27 of alcoholic beverages prior to October 1, 2024, and shall by

1 that date close all state operated liquor stores and all
2 retail operations and functions. These rules shall be adopted,
3 amended, and repealed in accordance with the Administrative
4 Procedure Act, Chapter 22 (commencing with Section 41-22-1) of
5 Title 41 of the Code of Alabama 1975. The rules shall address
6 all provisions of the liquor operations of the board that will
7 be impacted by eliminating the retail sale of liquor and
8 retail operations including, but not limited to, all of the
9 following:

10 (1) Revising to wholesale operations as necessary to
11 ensure adequate and timely distribution of liquor to licenses.

12 (2) Establishing a phase-out schedule for retail
13 stores that takes into consideration current lease
14 arrangements and the availability of products in a local
15 community.

16 (3) Creating of a retail license for a fee not to
17 exceed seven hundred fifty dollars (\$750) per year permitting
18 the purchase of liquor from the board and the retail sale of
19 the liquor in unopened containers for off-premises
20 consumption.

21 (4) Providing severance pay, preferential treatment,
22 and other benefits for displaced employees as authorized by
23 the State Personnel Board.

24 (5) Adjusting the markup on liquor purchased at
25 wholesale from the Board as necessary to hold recipients of
26 store profits harmless.

27 (6) Enforcing of the provisions of this act.

1 Section 2. (a) In addition to retail licensees, only
2 existing licensees of the Alabama Alcoholic Control Board with
3 the authority, on the date retail operations are completely
4 phased-out or no later than October 1, 2024, to sell liquor in
5 the original unopened containers at retail for off-premises
6 consumption may continue to sell liquor in the original
7 unopened containers at retail for off-premises consumption
8 according to the terms of the license on the date of issuance
9 to the licensee. Notwithstanding any other law, these
10 licensees may annually renew this license with this privilege.
11 Notwithstanding any other law, these licensees may not sell or
12 transfer the license.

13 (b) Retail licenses and those licenses referred to
14 in subsection (a) shall be the only types of licenses issued
15 by the board authorizing the sale of liquor in original
16 unopened containers at retail for off-premises consumption.

17 (c) A retail licensee or any other person may sell
18 beer and table wine upon obtaining the proper license as
19 presently required by law.

20 Section 3. Alcohol sold at retail in stores operated
21 by the Alabama Alcoholic Beverage Control Board prior to
22 October 1, 2024 shall be subject to the tax and markup
23 presently provided by law and the proceeds of that tax shall
24 be distributed as presently provided by law. Alcohol sold by
25 the board after retail stores have been phased-out shall be
26 subject to the markup established by rule of the board.

1 Section 4. (a) (1) This act shall not be construed to
2 prohibit a municipality from collecting municipal sales taxes
3 on liquor sold by any retail licensee of the board, including,
4 but not limited to, a retail licensee at the same rate levied
5 by the municipality on the sales of other tangible property.

6 (2) If a local law allocated a portion of sales tax
7 proceeds received by the municipality, pursuant to Section
8 28-3-280 to Section 28-3-286, inclusive, Code of Alabama 1975,
9 the same amount of sales tax proceeds received by the
10 municipality in the base year from sales taxes on the sale of
11 liquor in original unopened containers by licensees of the
12 board for off-premises consumption shall be allocated in the
13 same manner at the same intervals by the municipality until
14 otherwise provided by local law. The remaining amounts
15 collected by the municipality shall be distributed as provided
16 by general or local law.

17 (3) For the purposes of this subsection, the last
18 full state tax year prior to the effective date of this act
19 shall be referred to as the base year.

20 b) (1) This act shall not be construed to prohibit a
21 county that is authorized to levy a sales tax, in addition to
22 the tax authorized by Section 40-12-4 of the Code of Alabama
23 1975, from collecting the county sales tax on the retail sale
24 of liquor in original unopened containers for off-premises
25 consumption by a licensee of the board at the same rate levied
26 by the county on the sales of other tangible property. This

1 act shall not be construed as granting this taxing authority
2 to a county.

3 (2) If a local law allocated a portion of sales tax
4 proceeds received by the county, pursuant to Section 28-3-280
5 to Section 28-3-286, inclusive, Code of Alabama 1975, the same
6 amount of sales tax proceeds received by the county on the
7 sale of liquor in original unopened containers for
8 off-premises consumption by a licensee of the board shall be
9 allocated in the same manner at the same intervals by the
10 county until otherwise provided by local law. The remaining
11 amounts collected by the county shall be distributed as
12 provided by general or local law.

13 (3) For the purposes of this subsection, the last
14 full state tax year prior to the effective date of this act
15 shall be referred to as the base year.

16 Section 5. The board shall continue to perform all
17 other functions required by law, including, but not limited
18 to, the wholesale sale of liquor, licensing, auditing and
19 collection.

20 Section 6. Sections 28-3-43, 28-3-53.1, and
21 28-3-53.2, of the Code of Alabama 1975, are amended to read as
22 follows:

23 "§28-3-43.

24 "(a) The functions, duties, and powers of the board
25 shall be as follows:

26 "(1) To buy, manufacture and sell at wholesale
27 alcoholic beverages and to have alcoholic beverages in its

1 possession for sale at wholesale, as defined and enumerated in
2 this chapter and to have alcoholic beverages in its possession
3 for sale at retail at any time prior to October 1, 2024.

4 "(2) To control the possession, sale,
5 transportation, and delivery of alcoholic beverages as
6 enumerated and defined in this chapter.

7 "(3) To determine the localities within which ~~any a~~
8 ~~state-operated liquor~~ store ~~shall~~ may be ~~established and~~
9 operated and the location of ~~such~~ the state-operated liquor
10 store at any time prior to October 1, 2024. No state-operated
11 liquor store shall be established in and neither the board nor
12 any other person may legally buy, manufacture, or sell
13 alcoholic beverages in ~~any a~~ county which has voted in the
14 negative in ~~any an~~ election called as provided in Chapter 2 of
15 this title for determining the ~~said~~ issue unless and until
16 ~~said~~ the county has at a subsequent similar election voted in
17 the affirmative. The board shall have the power at any time
18 prior to October 1, 2024, to ~~establish and~~ maintain
19 state-operated liquor stores for the sale of liquors as
20 defined in this chapter; ~~provided, that municipalities.~~
21 Municipalities may by proper zoning ordinances establish zones
22 or districts within which ~~such~~ liquor stores may or may not be
23 established; ~~provided further, that the.~~ The number of
24 state-operated liquor stores in ~~any a~~ municipality shall be
25 limited to two ~~such~~ stores for municipalities of 25,000
26 population or less according to the last or any subsequent
27 federal census and, in municipalities having more than 25,000

1 population, such additional stores as the board, in its
2 discretion, may determine.

3 "(4) To make provision for the maintenance of
4 warehouses for alcoholic beverages and to control the delivery
5 of alcoholic beverages to and from such warehouses and the
6 keeping of the same therein.

7 "(5) To operate distilleries and to manufacture
8 alcoholic beverages if, in the opinion of the board, the
9 purposes of this chapter can be thereby promoted. The price of
10 all spiritous and vinous liquors dispensed by the board shall
11 be fixed by the board, and the location of state-operated
12 liquor stores shall not be adjacent to schools or churches or
13 in a neighborhood which is exclusively residential. Neither
14 the board nor ~~any~~ a state store operated by it shall in any
15 manner advertise its wares for sale.

16 "(6) To appoint, subject to the provisions of the
17 Merit System, every officer, agent, inspector, investigator,
18 and employee, in accordance with the qualifications
19 specifically set out in this chapter, required for the
20 operation of the business of ~~said~~ the board; ~~commission~~ ~~such~~
21 the agents, inspectors, or investigators as necessary to make
22 arrests and execute search warrants and have the same
23 authority as designated to peace officers ~~as now authorized~~ by
24 law; assign all employees their official positions and
25 titles, define their respective duties and powers, require
26 them ~~or any of them~~ to give bonds payable to the state in such
27 penalty as shall be fixed by the board; and engage the

1 services of experts and persons engaged in the practice of a
2 profession.

3 "(7) To control the manufacture, possession, sale,
4 consumption, importation, use, and delivery of liquor,
5 alcohol, and malt and brewed beverages in accordance with ~~the~~
6 ~~provisions of~~ this chapter and to fix the wholesale price of
7 liquor and the retail prices at which liquor shall be sold at
8 ~~Alabama~~ state-operated liquor stores. The board shall require
9 each Alabama manufacturer and each nonresident manufacturer of
10 distilled liquors selling distilled liquors to the board to
11 make application for and be granted a permit by the board
12 before distilled liquors shall be purchased from ~~such~~ the
13 manufacturer. The board before issuing ~~such~~ the permit shall
14 collect from each applicant a permit fee of ~~\$15.00~~ fifteen
15 dollars (\$15), which sum shall be paid annually thereafter on
16 application. In the event that ~~any such a~~ manufacturer ~~shall~~,
17 in the opinion of the board, ~~sell~~ sells distilled liquors ~~to~~
18 ~~the board~~ through another person for the purpose of evading
19 this provision relating to permits, the board shall require
20 ~~such~~ the person before purchasing distilled liquors from him
21 or her or it to take out a permit and pay the same fee as
22 ~~hereinbefore~~ is required to be paid by ~~such~~ the manufacturer.
23 ~~All~~ These permit fees ~~so collected~~ shall be paid into the
24 State ~~Stores~~ General Fund.

25 "(8) To grant, issue and suspend, or revoke for
26 cause liquor licenses and alcohol permits as provided in this
27 chapter.

1 "(9) To grant, issue and suspend, or revoke for
2 cause malt or brewed and vinous beverages licenses as provided
3 in this chapter.

4 "(10) To lease, and furnish, and equip such
5 buildings, rooms, and other accommodations as shall be
6 required for the operation of this chapter. To determine the
7 nature, form, and capacity of all packages to be used for
8 containing liquor, alcohol, or malt or brewed beverages to be
9 kept or sold under this chapter and to prescribe the form and
10 contents of all labels and seals to be placed thereon.

11 "(11) To purchase from time to time the necessary
12 stamps, crowns, or lids, in a quantity sufficient for a period
13 not to exceed six months, for identifying each article sold or
14 distributed by or through the ~~said~~ state-operated liquor
15 stores or a licensee of the board. All liquors, vinous
16 beverages, and alcohol sold or distributed by the board or ~~any~~
17 a licensee of ~~said~~ the board shall be stamped or endorsed in
18 such characteristic way or manner to be determined by the
19 board as shall clearly indicate that it has been dispensed or
20 regulated by the board, and all such liquors, vinous
21 beverages, or alcohol not containing such label shall be
22 contraband and subject to forfeiture as other contraband
23 liquors.

24 "(12) To require all wholesalers who make sales of
25 alcoholic beverages of any kind as defined in this chapter to
26 ~~any~~ a state-operated liquor store or other authorized licensee
27 to forward, when the shipments of ~~such~~ the alcoholic beverages

1 are made, to the board an invoice setting out the quantities
2 of beverages purchased, and the price quotation showing at
3 what price such beverages were sold and such invoice and
4 quotation to be placed on record in the records of the
5 Alcoholic Beverage Control Board of the State of Alabama and
6 to be held for a period of not less than 18 months.

7 "(b) The Alcoholic Beverage Control Board shall be
8 subject to regular examinations by the Examiners of Public
9 Accounts the same as all other state agencies.

10 "§28-3-53.1.

11 "(a) There shall be no distribution of any taxes
12 collected on alcoholic beverages sold by the Alabama Alcoholic
13 Beverage Control Board or of any funds distributed as net
14 profits by said board for at least 25 days beginning October
15 1, 1983, for at least 55 days by September 30, 1984, for at
16 least 85 days by September 30, 1985, for at least 115 days by
17 September 30, 1986, for at least 120 days by September 30,
18 1987, and ~~thereafter~~ until October 1, 2024, from the close of
19 the month in which the ~~said~~ taxes or ~~said~~ funds are realized.
20 The moneys so realized are intended for use by ~~said~~ the board
21 for inventory purposes. This subsection shall be inoperative
22 after September 30, 2024.

23 ~~"(b) Any funds accumulated as working capital under~~
24 ~~Section 28-3-74(d) shall be distributed to the several~~
25 ~~beneficiaries on the same basis as withheld on the next~~
26 ~~distribution of profits to such beneficiaries by the Alabama~~
27 ~~Alcoholic Beverage Control Board after October 1, 1984.~~

1 "(b) Any taxes previously collected and maintained
2 in the Working Inventory Capital Fund as of July 1, 2024,
3 shall be transferred to the State General Fund. Any additional
4 taxes collected but not distributed as of October 1, 2024,
5 pursuant to subsection (a) of this section shall first be
6 distributed in the same manner and in the amounts due for the
7 month of October 2023, to all current tax recipients and the
8 remainder shall be transferred to the State General Fund no
9 later than January 31, 2025.

10 "§28-3-53.2.

11 "(a) The word board, wherever used in this section,
12 shall mean the Alabama Alcoholic Beverage Control Board
13 provided for in Chapter 3, Title 28. The term mark up,
14 wherever used in this section shall mean the percentage amount
15 added to cost plus freight on spirituous or vinous liquors
16 sold by the board, exclusive of taxes heretofore levied with
17 respect thereto.

18 "(b) Until September 30, 2024, the ~~The~~ total amount
19 of the additional mark up on cost of merchandise, levied by
20 the Alcoholic Beverage Control Board subsequent to June 30,
21 1983, shall be designated to the credit of the General Fund of
22 the state.

23 "(c) The board shall be prohibited from increasing
24 the mark up on wholesale case lot sales of liquor above 16.99
25 percent of the cost plus freight subsequent to December 1,
26 2004, except as necessary following the effective date of this
27 act to: (1) fund remaining operating expenses of the board;

1 (2) provide severance pay or other benefits to displaced
2 workers; and (3) hold current recipients of store profits
3 harmless as retail stores and operations are phased out and
4 subsequently eliminated. Provided, however, the board shall be
5 prohibited from increasing the markup above 20 percent of the
6 cost plus freight subsequent to October 1, 2024. The
7 additional markup shall be distributed in the same manner as
8 provided for store profits in Section 28-3-74. For the
9 purposes of this provision, the base amount of profit
10 distributions shall be the most recently completed fiscal year
11 prior to the effective date of this act."

12 Section 7. All laws or parts of laws which conflict
13 or are inconsistent with this act are repealed. Sections
14 28-3-280 through 28-3-286 of the Code of Alabama 1975 are
15 specifically repealed on October 1, 2024.

16 Section 8. This act shall not be construed as
17 authorizing the sale of liquor or any other type of alcoholic
18 beverage in any area of the state. Such sales shall be
19 permitted only if otherwise authorized by law.

20 Section 9. This act shall become effective
21 immediately following its passage and approval by the
22 Governor, or its otherwise becoming law.