

1 HB419
2 208928-2
3 By Representative Brown (K)
4 RFD: State Government
5 First Read: 23-FEB-21

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8 SYNOPSIS: Existing law provides various prohibitions
9 on the authority of a person licensed by the
10 Alcoholic Beverages Control Board to engage in the
11 sale, manufacture, transport, marketing, or
12 production of certain goods.

13 This bill would specify that a retail
14 licensee of the Alcoholic Beverages Control Board
15 may not sell, distribute, market, deliver, or
16 display drug paraphernalia or non-conforming
17 pharmaceuticals, and would provide criminal
18 penalties for a violation.

19 Amendment 621 of the Constitution of Alabama
20 of 1901, now appearing as Section 111.05 of the
21 Official Recompilation of the Constitution of
22 Alabama of 1901, as amended, prohibits a general
23 law whose purpose or effect would be to require a
24 new or increased expenditure of local funds from
25 becoming effective with regard to a local
26 governmental entity without enactment by a 2/3 vote
27 unless: it comes within one of a number of

1 specified exceptions; it is approved by the
2 affected entity; or the Legislature appropriates
3 funds, or provides a local source of revenue, to
4 the entity for the purpose.

5 The purpose or effect of this bill would be
6 to require a new or increased expenditure of local
7 funds within the meaning of the amendment. However,
8 the bill does not require approval of a local
9 governmental entity or enactment by a 2/3 vote to
10 become effective because it comes within one of the
11 specified exceptions contained in the amendment.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 Relating to the Alcoholic Beverages Licensing Code;
18 to amend Section 28-3A-25, Code of Alabama 1975, to prohibit
19 the sale, distribution, marketing, or display of certain drug
20 paraphernalia or non-conforming pharmaceuticals in certain
21 circumstances; to provide criminal penalties for a violation;
22 and in connection therewith would have as its purpose or
23 effect the requirement of a new or increased expenditure of
24 local funds within the meaning of Amendment 621 of the
25 Constitution of Alabama of 1901, now appearing as Section
26 111.05 of the Official Recompilation of the Constitution of
27 Alabama of 1901, as amended.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Section 28-3A-25, Code of Alabama 1975,
3 is amended to read as follows:

4 "§28-3A-25.

5 "(a) It shall be unlawful:

6 "(1) For any manufacturer, importer, or wholesaler,
7 or the ~~servants~~, agents, or employees of the same, to sell,
8 trade, or barter in alcoholic beverages between the hours of
9 nine o'clock p.m. of any Saturday and two o'clock a.m. of the
10 following Monday.

11 "(2) For any wholesaler, or the ~~servants~~, agents, or
12 employees of the wholesaler, to sell alcoholic beverages, to
13 other than wholesale or retail licensees or others within this
14 state lawfully authorized to sell alcoholic beverages, or to
15 sell for export.

16 "(3) For any person, licensee, or the board, either
17 directly or by the ~~servants~~, agents, or employees of the same,
18 or for any ~~servant~~, agent, or employee of the same, to sell,
19 deliver, furnish, or give away alcoholic beverages to any
20 person under the legal drinking age, as defined in Section
21 28-1-5, or to permit any person under the legal drinking age,
22 as defined in Section 28-1-5, to drink, consume, or possess
23 any alcoholic beverages on any licensee's premises.

24 "(4) For any person to consume alcoholic beverages
25 on the premises of any state liquor store or any off-premises
26 retail licensee, or to allow alcoholic beverages to be
27 consumed on the premises of any state liquor store or any

1 off-premises retail licensee, except as specifically allowed
2 by law for the tasting of alcoholic beverages.

3 "(5) For any licensee to fail to keep for a period
4 of at least three years, complete and truthful records
5 covering the operation of his or her license and particularly
6 showing the date of all purchases of alcoholic beverages, the
7 actual price paid ~~therefor~~, and the name of the vendor, or to
8 refuse the board or any authorized employee of the board
9 access to the records or the opportunity to make copies of the
10 records when the request is made during business hours.

11 "(6) For any licensee, or the ~~servants,~~ agents, ~~or~~
12 employees of the ~~same~~ licensee, to refuse the board, any of
13 its authorized employees, or any duly commissioned law
14 enforcement officer the right to completely inspect the entire
15 licensed premises at any time the premises are open for
16 business.

17 "(7) For any person to knowingly sell any alcoholic
18 beverages to any person engaged in the business of illegally
19 selling alcoholic beverages.

20 "(8) For any person to manufacture, transport, or
21 import alcoholic beverages into this state, except in
22 accordance with the reasonable rules of the board. This
23 subdivision ~~shall~~ does not prohibit the transportation of
24 alcoholic beverages through the state or any dry county so
25 long as the beverages are not for delivery therein, if the
26 transportation is done in accordance with the reasonable rules
27 of the board.

1 "(9) For any person to fortify, adulterate,
2 contaminate, or in any manner change the character or purity
3 of alcoholic beverages from that as originally marketed by the
4 manufacturer, except that a retail licensee may mix a chaser
5 or other ingredients necessary to prepare a cocktail or mixed
6 drink or may make infusions for on-premises consumption in
7 accordance with Section 28-3A-20.3.

8 "(10) For any person licensed to sell alcoholic
9 beverages for on-premises consumption to offer to give any
10 thing of value ~~as a premium for the return of caps, stoppers,~~
11 ~~corks, stamps, or labels taken from any bottle, case, barrel,~~
12 ~~or package containing the alcoholic beverages,~~ or to offer to
13 give a discount ~~any thing of value as a premium or present~~ to
14 induce the purchase of the alcoholic beverages, or for any
15 other purpose whatsoever in connection with the sale of the
16 alcoholic beverages. This subdivision ~~shall~~ does not apply to
17 the return of any ~~moneys~~ monies specifically deposited for the
18 return of the original containers to the owners of the
19 containers.

20 "(11) For any licensee or transporter for hire,
21 ~~servant, or~~ or agent, ~~or~~ employee of the same, to transport any
22 alcoholic beverages except in the original container, and for
23 any transporter for hire to transport any alcoholic beverages
24 within the state, unless the transporter holds a permit issued
25 by the board.

26 "(12) For any manufacturer, importer, or wholesaler,
27 ~~servant, or~~ or agent, ~~or~~ employee of the same, to deliver any

1 alcoholic beverages, except in vehicles bearing such
2 information on each side of the vehicle as required by the
3 board.

4 "(13) For any person to sell alcoholic beverages
5 within any dry county or county where the electors have voted
6 against the sales, except in wet municipalities or as
7 authorized by Section 28-3A-18.

8 "(14) For any person, firm, corporation,
9 partnership, or association of persons as the terms are
10 defined in Section 28-3-1, including any civic center
11 authority, racing commission, fair authority, airport
12 authority, public or quasi-public board, agency, or
13 commission, any agent thereof, or otherwise, who or which has
14 not been properly licensed under the appropriate provisions of
15 this chapter to sell, offer for sale, or have in possession
16 for sale, any alcoholic beverages. Any alcoholic beverages so
17 possessed, maintained, or kept shall be contraband and subject
18 to condemnation and confiscation as provided by law.

19 "(15) For any manufacturer, distiller, producer,
20 importer, or distributor of alcoholic beverages to employ ~~and~~
21 ~~maintain~~ any person, who is not a full-time bona fide
22 employee, as a resident sales agent, broker, or other like
23 representative, for the purpose of promoting a sale, purchase,
24 or acquisition of alcoholic beverages to or by the state or
25 the board, or for any person who is not a full-time bona fide
26 employee to act as an agent, broker, or representative of any

1 manufacturer, distributor, producer, importer, or distiller
2 for that purpose.

3 "(16) For any person to sell, give away, or
4 otherwise dispose of taxable alcoholic beverages within this
5 state on which the required taxes have not been paid as
6 required by law.

7 "(17) For any wholesaler or retailer, or the
8 servant, agent, or employee of the same, to sell, distribute,
9 deliver, or to receive or store for sale or distribution
10 within this state any alcoholic beverages unless there first
11 has been issued by the board a manufacturer's license to the
12 manufacturer of the alcoholic beverages or its designated
13 representative or an importer license to the importer of the
14 alcoholic beverages.

15 "(18) For any person under the legal drinking age,
16 as defined in Section 28-1-5, to attempt to purchase, to
17 purchase, consume, possess, or transport any alcoholic
18 beverages within the state; provided, however, ~~it shall is not~~
19 ~~be unlawful for~~ a person under the legal drinking age, as
20 defined in Section 28-1-5, ~~to~~ may be an employee of a
21 wholesale licensee or an off-premises retail licensee of the
22 board ~~to~~ and handle, transport, or sell any beer or table wine
23 if the person under the legal drinking age is acting within
24 the line and scope of his or her employment ~~while so acting~~.
25 There must be an adult licensee, ~~servant,~~ agent, or employee
26 of the same present at all times a licensed establishment is
27 open for business.

1 "(19) For any person, except where authorized by a
2 local act or general act of local application or pursuant to
3 Section 28-3-25, to buy, give away, sell, or serve for
4 consumption on or off the premises, or to drink or consume any
5 alcoholic beverages in any cafe, lunchroom, restaurant, hotel
6 dining room, or other public place on Sunday after the hour of
7 two o'clock a.m.

8 "(20) Except where authorized by a local act or
9 general act of local application or pursuant to Section
10 28-3-25, for the proprietor, keeper, or operator of any cafe,
11 lunchroom, restaurant, hotel dining room, or other public
12 place to knowingly permit any person to give away, sell, or
13 serve for consumption, on or off the premises, or to drink or
14 consume any alcoholic beverages on the premises of the cafe,
15 lunchroom, restaurant, hotel dining room, or other public
16 place on Sunday after the hour of two o'clock a.m.

17 "(21) For a person under the age of 21 years to
18 knowingly use or attempt to use a false, forged, deceptive, or
19 otherwise nongenuine driver's license to obtain or attempt to
20 obtain alcoholic beverages within this state.

21 "(22)a. For any holder of a license or permit issued
22 by the board to sell, distribute, market, deliver, or display
23 drug paraphernalia or non-conforming pharmaceuticals. On a
24 first violation of this subdivision, the board, any of its
25 authorized employees, a local governmental official, or a law
26 enforcement officer may provide a verbal or written
27 notification to the licensee or permit holder informing the

1 licensee or permit holder that prohibited items, including
2 drug paraphernalia or non-conforming pharmaceuticals, are
3 being sold, distributed, delivered, or displayed. The licensee
4 or permit holder shall immediately cease all sales of any
5 prohibited item and shall remove the item from the premises of
6 the licensed or permitted premises within 24 hours.

7 "b. On a second or subsequent violation of this
8 subdivision, a rebuttable presumption shall exist that the
9 licensee or permit holder knowingly sold, distributed,
10 delivered, or displayed drug paraphernalia or non-conforming
11 pharmaceuticals.

12 "c. For purposes of this subdivision, "drug
13 paraphernalia" means any item, whether useful for
14 nondrug-related purposes or not, which is displayed,
15 advertised, promoted, designed, decorated, or adorned in a
16 manner to reasonably suggest its usefulness in the growing,
17 harvesting, processing, manufacturing, preservation,
18 concealment, inhalation, injection, or ingestion of marijuana,
19 hashish, cocaine, or any controlled substance as defined in 21
20 U.S.C. §§ 801-971 or Section 13A-12-212. Also for purposes of
21 this subdivision, "non-conforming pharmaceuticals" means
22 preparations or drugs that do not conform to the standards and
23 tests as to quality and strength that are provided in the
24 latest edition of the United States Pharmacopoeia or the
25 National Formulary, or that violate any provision of Title 20
26 of this code.

1 "(b) (1) Any violation of subdivisions (1) through
2 (17) or subdivision (22) of subsection (a) shall be a
3 misdemeanor punishable by a fine of not less than one hundred
4 dollars (\$100) nor more than one thousand dollars (\$1,000)
5 and, to which, at the discretion of the court ~~or judge trying~~
6 ~~the case, may be added imprisonment in the county jail or at~~
7 ~~hard labor for the county~~ for not more than six months for the
8 first conviction; and, on the second conviction ~~of a violation~~
9 ~~of the subdivisions, the offense,~~ in addition to the
10 aforementioned fine, shall be punishable by imprisonment ~~or at~~
11 ~~hard labor for the county~~ for not less than three months nor
12 more than six months ~~to be imposed by the court or judge~~
13 ~~trying the case;~~ and, on the third conviction and every
14 subsequent conviction ~~of a violation of the subdivisions, the~~
15 ~~offense,~~ in addition to a fine within the limits abovenamed,
16 shall be punishable by imprisonment ~~or at hard labor for the~~
17 ~~county~~ for not less than six months nor more than 12 months.

18 "(2) Any violation of subdivision (18), (19), (20),
19 or (21) of subsection (a) shall be a misdemeanor punishable by
20 a fine of not less than fifty dollars (\$50) nor more than five
21 hundred dollars (\$500), to which, at the discretion of the
22 court ~~or judge trying the case,~~ may be added imprisonment in
23 the county jail ~~or at hard labor for the county~~ for not more
24 than three months.

25 "(c) In addition to the penalties otherwise provided
26 for a violation of subdivisions (18) and (21) of subsection
27 (a), upon conviction, including convictions in juvenile court

1 or under the Youthful Offender Act, the offender's license to
2 operate a motor vehicle in this state shall be surrendered by
3 the offender to the ~~judge adjudicating the case~~ court for a
4 period of not less than three months nor more than six months.
5 The ~~judge~~ court shall forward a copy of the order suspending
6 the license to the Alabama State Law Enforcement Agency for
7 enforcement purposes."

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