

1 HB478
2 205984-1
3 By Representative McCampbell (N & P)
4 RFD: Tuscaloosa County Legislation
5 First Read: 04-MAY-20

SYNOPSIS: Under existing law, the Alcoholic Beverage Control Board may not issue an alcoholic beverage retail license in a Class 4 municipality that has adopted a mayor-council form of government unless the application for a license was first approved by the governing body of the municipality, or if the application was denied, the denial was set aside by a court based on grounds that the governing body failed to show a valid enumerated reason why the denial was appropriate.

This bill would revise the list of enumerated reasons why denial of an alcoholic beverage license by the governing body was appropriate.

A BILL
TO BE ENTITLED
AN ACT

1 Relating to alcoholic beverage licenses in certain
2 Class 4 municipalities; to amend Act 98-342 of the 1998
3 Regular Session (Acts 1998, p. 602); to repeal Section 28-1-7,
4 Code of Alabama 1975; and to revise the list of enumerated
5 reasons when denial by the governing body of a Class 4
6 municipality that has adopted a mayor-council form of
7 government of an alcoholic beverage license is appropriate.
8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Act 98-342 of the 1998 Regular Session,
10 (Acts 1998, p. 602) is amended to read as follows:

11 ~~"Section 1. (a)~~ (a) All other provisions of law, or
12 ~~rules, or regulations~~ to the contrary notwithstanding, the
13 Alabama Alcoholic Beverage Control Board ~~shall absolutely have~~
14 ~~no authority to~~ may not issue any form of license in a Class
15 ~~IV 4~~ 4 municipality organized pursuant to ~~Ala. Code §~~ Section
16 ~~11-44B-1, et seq. (1975)~~ of the Code of Alabama 1975,
17 including, but not limited to, ~~on or off-premise~~ off-premises
18 ~~consumption licenses, special event or, special retail~~
19 ~~licenses, restaurant or lounge licenses, or club licenses, or~~
20 ~~other licenses~~ for the retail sale of any form of ~~intoxicating~~
21 alcoholic beverages, including, but not limited to, beer, and
22 ~~other forms of malt beverages,~~ wine, liquor, or other
23 alcoholic beverages regulated by the board, unless ~~the~~ one of
24 the following requirements is satisfied:

25 ~~"(a) (1)~~ (1) The application ~~therefore has first been~~
26 was first approved by the governing body of the municipality
27 ~~within whose corporate limits~~ in which the site of the license

1 is to be situated. The municipality ~~is authorized to~~ may adopt
2 ~~and promulgate rules and regulations~~ for the administration
3 and processing of applications for such licenses.

4 "~~Section 2. (b) (2) The Alabama Alcoholic Beverage~~
5 ~~Control Board may issue such license only if the denial of~~
6 ~~approval~~ Denial of the application by the governing body ~~of~~
7 ~~the municipality~~ has been set aside by order of the circuit
8 court of the county in which the ~~municipality is~~ the site was
9 to be situated ~~and such order has been affirmed by the~~
10 ~~appropriate appellate court, if an appeal has been taken. The~~
11 ~~circuit court of the county in which a municipality is located~~
12 ~~may set aside the denial of approval of a license only on the~~
13 ~~basis that the denial by the municipality was arbitrary and~~ or
14 ~~capricious in that there was no~~ without a showing ~~to~~ by the
15 governing body ~~of the municipality of any~~ of one of the
16 following:

17 "~~(a)~~ (1) The creation of a nuisance.

18 "~~(b)~~ (2) Circumstances ~~clearly~~ detrimental to
19 adjacent residential neighborhoods. ~~or~~

20 "(3) Circumstances detrimental to the public health,
21 safety, and welfare.

22 "~~(c)~~ (4) A violation ~~Violations~~ of applicable ~~laws,~~
23 ~~ordinances~~ or zoning restrictions or regulations.

24 "(5) An individual applying for the license, or an
25 individual who is an officer or director of a corporation or
26 other entity applying for the license, has a prior conviction
27 involving the use of alcoholic beverages or a controlled

1 substance or a prior conviction involving the illegal sale of
2 alcoholic beverages or a controlled substance.

3 "(6) The proximity of the proposed business to a
4 school or child care facility and the business hours of the
5 proposed business will create a harmful environment for the
6 students or children.

7 "(7) Traffic congestion created by licensing the
8 proposed business.

9 "(8) Any other reason that poses a risk to the
10 surrounding neighborhoods or to public health, safety, and
11 welfare.

12 ~~"Section 3. (c) Proceedings in circuit court to~~
13 ~~review an action of a municipal governing body denying~~
14 ~~approval of a license application shall be expedited~~
15 ~~proceedings, heard by a circuit judge without a jury. who~~
16 ~~shall consider any testimony or matters presented to the city~~
17 ~~governing body and any new evidence presented in explanation~~
18 ~~or contradiction of the same. If a licensee ultimately~~
19 ~~prevails in any judicial review as provided for herein on any~~
20 ~~basis other than new evidence presented to the court that was~~
21 ~~not fully presented to the municipal governing body, then the~~
22 ~~applicant shall be entitled to an award of reasonable~~
23 ~~attorneys' fees against the municipality. Any proceeding to~~
24 ~~review the denial of approval of a license application by a~~
25 ~~municipality shall be commenced within fourteen (14) calendar~~
26 ~~14 days of the action by the municipal governing body and~~

1 shall be set for hearing by the court within ~~thirty (30)~~
2 ~~calendar~~ 30 days thereafter.

3 ~~"Section 4. This act shall supersede any and all~~
4 ~~laws, rules and regulations contrary to or inconsistent with~~
5 ~~this act."~~

6 Section 2. Section 28-1-7, Code of Alabama 1975,
7 relating to alcoholic beverage licenses in certain Class 4
8 municipalities, is repealed.

9 Section 3. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.