

1 SB473
2 151312-5
3 By Senator Figures (N & P)
4 RFD: Local Legislation No. 3
5 First Read: 25-APR-13

1 SB473

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4 With Notice and Proof

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6 ENROLLED, An Act,

7 Relating to Mobile County; to allow a person who is
8 on active duty, in active reserve status, or retired from the
9 Armed Forces of the United States, or the dependent of such
10 person, to have a reasonable quantity of alcoholic beverages
11 purchased from a military liquor store or in-state liquor
12 store; to provide certain findings and declarations; and to
13 provide for a civil penalty for a violation of this act.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. (a) The Legislature of Alabama is
16 cognizant of "Opinion of the Justices No. 376," issued April
17 9, 2002, which states that a local bill for Washington County
18 "purporting to allow by local law the creation of a traffic in
19 alcohol that does not presently exist in smaller
20 municipalities in Washington County, does not fit within the
21 ambit of the last paragraph of Section 104 permitting the
22 Legislature to pass local laws regulating or prohibiting such
23 traffic." The effect of this Opinion of the Justices is to
24 greatly limit situations in which local laws may be enacted
25 regarding alcoholic beverages. This opinion, in part, was

1 based upon a determination that, "Generally, 'regulate'
2 implies the exercise of control over something that already
3 exists." While respecting the constitutional authority granted
4 to the Alabama Supreme Court to interpret the Constitution of
5 Alabama of 1901, this body disagrees with the conclusion
6 reached by the court concerning Section 104. In an effort to
7 further define this issue and to assist the court in the
8 appropriate interpretation of Section 104, the Legislature of
9 Alabama respectfully makes the following findings:

10 (1) As used in Section 104, the term "regulate" was
11 not intended to be of a narrowing or restraining nature. If
12 that was the intent of the framers of the Constitution, an
13 appropriate verb such as "limit," "restrict," or "suppress,"
14 in conjunction with the phrase "existing laws," would have
15 been employed.

16 (2) With all due respect to the court, the word
17 "regulate" does not generally imply "the exercise of control
18 over something that already exists" and such a construction is
19 not the "general sense of the phrase." To the contrary, one of
20 the initial definitions of regulate in "Black's Law
21 Dictionary" is "to fix, establish, or control"; and
22 "establish" in the same dictionary includes the definition "to
23 found, to create, to regulate." Unquestionably, regulate does
24 not imply application only to something in existence; rather,

1 the term includes the "establishment" or "creation" of the
2 thing to be subsequently managed.

3 (3) The interpretation of the term "regulation"
4 adopted by the court, if applied to other federal and state
5 constitutional and statutory provisions, will result in
6 unreasonable and unintended restrictions. For instance, the
7 language in Article I, Section 8 of the United States
8 Constitution, "The congress shall have power...to regulate
9 commerce..." was not intended to apply only to types of
10 commerce in existence at the time the United States
11 Constitution was adopted. In fact, the U.S. Supreme Court has
12 stated that this clause should be broadly construed to meet
13 the over-expanding and increasingly complicated conditions of
14 commerce. Similarly, numerous state statutes are initially
15 adopted to regulate certain types of professional or
16 vocational activities or functions, and these activities or
17 functions are concurrently initially authorized. Under the
18 court's construction, if such activities or functions are not
19 first in existence, they may not subsequently be controlled.

20 (4) In view of the research of the court indicating
21 the absence of any discussion concerning this issue in the
22 debates of the 1901 Constitutional Convention, and the absence
23 of any reference to historical records of that time, the
24 interpretation of Section 104 by modern era historians should
25 only be given marginal consideration. As stated by the court,

1 such historical perspectives merely give the "appearance" of
2 intent, and, accordingly, are not supportive of specific
3 construction of Section 104.

4 (5) The concluding paragraph of Section 104 is a
5 unique provision providing for a form of local option or home
6 rule. In view of the present sentiments of Alabama citizens to
7 allow local control of public matters, it is essential that
8 this body and the judiciary appropriately interpret this
9 provision.

10 (b) Based upon the reasons expressed in subsection
11 (a), as a matter of law, the Legislature declares that this
12 act regulates the liquor traffic within the meaning and intent
13 of Section 104 of the Constitution of Alabama of 1901.

14 Section 2. (a) Notwithstanding the provisions of
15 Section 28-1-3.1 of the Code of Alabama 1975, any person 21
16 years of age or over who is on active duty, in active reserve
17 status, or retired from the Armed Forces of the United States,
18 or the dependent of the person, or is otherwise eligible to
19 purchase alcoholic beverage from military package or liquor
20 stores, shall be entitled to have in his or her possession, in
21 his or her motor vehicle, or a private residence or place of
22 private residence or the curtilage thereof in any county in
23 this state, for his or her own private use and not for resale,
24 a reasonable quantity of alcoholic beverage as defined in
25 Section 28-3-1, Code of Alabama 1975, if:

1 (1) The alcoholic beverage was sold by a military
2 liquor, package, Class 6, or similar store or outlet that
3 purchased its stock from licensed Alabama wholesalers or the
4 Alabama Alcoholic Beverage Control Board.

5 (2) The person shall have sufficient identification,
6 including, but not limited to, a sales receipt, to show that
7 the alcoholic beverage was purchased in Alabama and sold by
8 the military store or outlet.

9 (b) A person who violates this act, upon the first
10 violation, shall be subject to a civil penalty not to exceed
11 five hundred dollars (\$500).

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB473

Senate 02-MAY-13

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris
Secretary

House of Representatives
Passed: 09-MAY-13

By: Senator Figures