

1 SB538  
2 140895-1  
3 By Senator Holtzclaw  
4 RFD: Judiciary  
5 First Read: 19-APR-12

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SYNOPSIS:            This bill would allow persons 21 years of age or older to produce home brewed beer, mead, cider, and table wine in limited amounts for personal use; would prohibit a person convicted of a felony from home brewing; and would provide for a Class B misdemeanor punishment for violations of this act; and would add definitions of mead and cider.

                      Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates

1 funds, or provides a local source of revenue, to  
2 the entity for the purpose.

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

10  
11 A BILL  
12 TO BE ENTITLED  
13 AN ACT  
14

15 To permit persons 21 years of age or older to  
16 produce a limited amount of home brewed beer, mead, cider, and  
17 table wine for personal use; to prohibit a convicted felon  
18 from home brewing such beverages; to provide penalties for  
19 violations; and to amend Section 28-3-1, Code of Alabama 1975,  
20 relating to definitions of alcoholic beverages, to include  
21 definitions of mead and cider; and in connection therewith  
22 would have as its purpose or effect the requirement of a new  
23 or increased expenditure of local funds within the meaning of  
24 Amendment 621 of the Constitution of Alabama of 1901, now  
25 appearing as Section 111.05 of the Official Recompilation of  
26 the Constitution of Alabama of 1901, as amended.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. (a) Notwithstanding any provisions to the  
2           contrary, a person who has not been convicted of a felony in  
3           Alabama or any other state or federal jurisdiction, and who is  
4           not prohibited by Section 28-1-5, Code of Alabama 1975, from  
5           purchasing, consuming, possessing, or transporting alcoholic  
6           beverages due to age may produce at his or her legal  
7           residence, beer, mead, cider, and table wine, as those terms  
8           are defined in Section 28-3-1, Code of Alabama 1975, for  
9           personal use, in the amounts specified in this act, without  
10          payment of taxes or fees and without obtaining a license. The  
11          aggregate amount of the beer, mead, cider, and table wine  
12          permitted to be produced under this act, with respect to any  
13          legal residence, shall not exceed 15 gallons for each quarter  
14          of a calendar year. Further, there shall not be in any legal  
15          residence at any one time, more than an aggregate amount of 15  
16          gallons of beer, mead, cider, and table wine which has been  
17          produced under the authority of this act.

18                 (b) Beer, mead, cider, or table wine produced under  
19                 this act may not be sold or offered for sale.

20                 (c) Beer, mead, cider, or table wine produced under  
21                 this act may not be removed from the legal residence where it  
22                 was produced, except in quantities no larger than 10 gallons,  
23                 aggregate, for any one event, and to be transported for  
24                 personal use at organized events of homebrew competitions and  
25                 judgings licensed by the Alcoholic Beverage Control Board as a  
26                 special events retail license under Section 28-3A-20, Code of  
27                 Alabama 1975, provided that the license will not allow the

1 purchase or sale of any alcoholic beverages when that license  
2 is used for this purpose. Organized events involving beer,  
3 mead, cider, or table wine produced for personal use may not  
4 be held on the premises of entities otherwise licensed under  
5 Title 28, Code of Alabama 1975.

6 (d) Noting in this act permits the production of  
7 distilled liquors, for personal use or otherwise, or the use  
8 of distilled liquors or products in the production of beer,  
9 mead, cider, or table wine provided in this section.

10 (e) It shall be unlawful for any person less than 21  
11 years of age to attempt to purchase, consume, possess, or  
12 transport beer, mead, cider, or table wine produced for  
13 personal use.

14 (f) It shall be unlawful for any person less than 21  
15 years of age to attempt to purchase, possess, or transport any  
16 apparatus or equipment used to produce beer, mead, cider, or  
17 table wine. It shall be unlawful for any person, partnership,  
18 corporation, or other legal entity to sell, furnish, give  
19 away, or provide to any person less than 21 years of age any  
20 apparatus or equipment used to produce beer, mead, cider, or  
21 table wine.

22 (g) Nothing in this section permits the production  
23 of beer, mead, cider, or table wine in a dry municipality, as  
24 defined in Chapter 3 of Title 28, Code of Alabama 1975.  
25 Further, with the exception of wet municipalities, as defined  
26 in Chapter 3 of Title 28, Code of Alabama 1975, nothing in  
27 this section permits the production of beer, mead, cider, or

1 table wine in a dry county as defined in Chapter 3 of Title  
2 28, Code of Alabama 1975.

3 (h) The definitions contained in Section 28-3-1 of  
4 the Code of Alabama 1975, shall apply to this act.

5 (i) Any violation of this section shall be a Class B  
6 misdemeanor.

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

9 "§28-3-1.

10 "The following words or phrases, whenever they  
11 appear in this chapter, and in Alcoholic Beverage Licensing  
12 Code, being Act No. 80-529, Acts of Alabama, 1980, as amended,  
13 appearing as Chapter 3A, Title 28, as amended, and the Alabama  
14 Table Wine Act, being Act 80-382, Acts of Alabama 1980, as  
15 amended, appearing as Chapter 7, Title 28, as amended, unless  
16 the context clearly indicates otherwise, shall have the  
17 meaning ascribed to them in this section:

18 "(1) ALCOHOLIC BEVERAGES. Any alcoholic, spirituous,  
19 vinous, fermented, or other alcoholic beverage, or combination  
20 of liquors and mixed liquor, a part of which is spirituous,  
21 vinous, fermented, or otherwise alcoholic, and all drinks or  
22 drinkable liquids, preparations or mixtures intended for  
23 beverage purposes, which contain one-half of one percent or  
24 more of alcohol by volume, and shall include liquor, beer, and  
25 wine.

1           "(2) ASSOCIATION. A partnership, limited  
2 partnership, or any form of unincorporated enterprise owned by  
3 two or more persons.

4           "(3) BEER, or MALT OR BREWED BEVERAGES. Except as  
5 otherwise provided in this subdivision, any beer, lager beer,  
6 ale, porter, malt or brewed beverage, or similar fermented  
7 malt liquor containing one-half of one percent or more of  
8 alcohol by volume and not in excess of thirteen and  
9 nine-tenths percent by volume, by whatever name the same may  
10 be called.

11           "(4) BOARD. The Alcoholic Beverage Control Board.

12           "(5) CARTON. The package or container or containers  
13 in which alcoholic beverages are originally packaged for  
14 shipment to market by the manufacturer or its designated  
15 representatives or the importer.

16           "(6) CIDER. A fermented alcoholic beverage made from  
17 apple juice and containing not more than 8.5 percent alcohol  
18 by volume.

19           "~~(6)~~ (7) CONTAINER. The single bottle, can, keg, bag,  
20 or other receptacle, not a carton, in which alcoholic  
21 beverages are originally packaged for the market by the  
22 manufacturer or importer and from which the alcoholic beverage  
23 is consumed by or dispensed to the public.

24           "~~(7)~~ (8) CLUB.

25           "a. Class I. A corporation or association organized  
26 or formed in good faith by authority of law and which must  
27 have at least 150 paid-up members. It must be the owner,

1 lessee, or occupant of an establishment operated solely for  
2 the objects of a national, social, patriotic, political, or  
3 athletic nature or the like, but not for pecuniary gain, and  
4 the property as well as the advantages of which, belong to all  
5 the members and which maintains an establishment provided with  
6 special space and accommodations where, in consideration of  
7 payment, food with or without lodging is habitually served.  
8 The club shall hold regular meetings, continue its business  
9 through officers regularly elected, admit members by written  
10 application, investigation, and ballot and charge and collect  
11 dues from elected members.

12 "b. Class II. A corporation or association organized  
13 or formed in good faith by authority of law and which must  
14 have at least 100 paid-up members. It must be the owner,  
15 lessee, or occupant of an establishment operated solely for  
16 the objects of a national, social, patriotic, political, or  
17 athletic nature or the like. The club shall hold regular  
18 meetings, continue its business through officers regularly  
19 elected, admit members by written application, investigation  
20 and ballot and charge and collect dues from elected members.

21 "~~(8)~~ (9) CORPORATION. A corporation or joint stock  
22 association organized under the laws of this state, the United  
23 States, or any other state, territory or foreign country, or  
24 dependency.

25 "~~(9)~~ (10) DRY COUNTY. Any county which by a majority  
26 of those voting voted in the negative in an election  
27 heretofore held under the applicable statutes at the time of



1 the election or may hereafter vote in the negative in an  
2 election or special method referendum hereafter held in  
3 accordance with the provisions of Chapter 2 of this title, or  
4 held in accordance with the provisions of any act hereafter  
5 enacted permitting such election.

6 "~~(10)~~ (11) DRY MUNICIPALITY. Any municipality within  
7 a wet county which has, by its governing body or by a majority  
8 of those voting in a municipal election heretofore held in  
9 accordance with the provisions of Section 28-2-22, or in a  
10 municipal option election heretofore or hereafter held in  
11 accordance with the provisions of Act 84-408, Acts of Alabama  
12 1984, appearing as Chapter 2A of this title, or any act  
13 hereafter enacted permitting municipal option election, voted  
14 to exclude the sale of alcoholic beverages within the  
15 corporate limits of the municipality.

16 "~~(11)~~ (12) GENERAL WELFARE PURPOSES.

17 "a. The administration of public assistance as set  
18 out in Sections 38-2-5 and 38-4-1;

19 "b. Services, including supplementation and  
20 supplementary services under the federal Social Security Act,  
21 to or on behalf of persons to whom such public assistance may  
22 be given under Sections 38-2-5 and 38-4-1;

23 "c. Service to and on behalf of dependent, neglected  
24 or delinquent children; and

25 "d. Investigative and referral services to and on  
26 behalf of needy persons.

1           "~~(12)~~(13) HEARING COMMISSION. A body appointed by  
2 the board to hear and decide all contested license  
3 applications and all disciplinary charges against any licensee  
4 for violation of this title or the regulations of the board.

5           "~~(13)~~(14) HOTEL. A building or buildings held out to  
6 the public for housing accommodations of travelers or  
7 transients, and shall include motel, but shall not include a  
8 rooming house or boarding house.

9           "~~(14)~~(15) IMPORTER. Any person, association or  
10 corporation engaged in importing alcoholic beverages, liquor,  
11 wine, or beer, manufactured outside of the United States of  
12 America into this state or for sale or distribution in this  
13 state, or to the board or to a licensee of the board.

14           "~~(15)~~(16) LIQUOR. Any alcoholic, spirituous, vinous,  
15 fermented, or other alcoholic beverage, or combination of  
16 liquors and mixed liquor, a part of which is spirituous,  
17 fermented, vinous or otherwise alcoholic, and all drinks or  
18 drinkable liquids, preparations or mixtures intended for  
19 beverage purposes, which contain one-half of one percent or  
20 more of alcohol by volume, except beer and table wine.

21           "~~(16)~~(17) LIQUOR STORE. A liquor store operated by  
22 the board, where alcoholic beverages other than beer are  
23 authorized to be sold in unopened containers.

24           "~~(17)~~(18) MANUFACTURER. Any person, association, or  
25 corporation engaged in the producing, bottling, manufacturing,  
26 distilling, rectifying, or compounding of alcoholic beverages,  
27 liquor, beer, or wine in this state or for sale or

1 distribution in this state or to the board or to a licensee of  
2 the board.

3 "(19) MEAD. An alcoholic beverage produced by  
4 fermenting a solution of honey and water with grain mash and  
5 containing not more than 18 percent alcohol by volume.

6 "(18)(20) MINOR. Any person under 21 years of age,  
7 except a person 19 years of age or older prior to October 1,  
8 1985, is not a minor; provided, however, in the event Section  
9 28-1-5, shall be repealed or otherwise shall be no longer in  
10 effect, thereafter the provisions of Section 26-1-1, shall  
11 govern.

12 "(19)(21) MUNICIPALITY. Any incorporated city or  
13 town of this state to include its police jurisdiction.

14 "(20)(22) PERSON. Every natural person, association,  
15 or corporation. Whenever used in a clause prescribing or  
16 imposing a fine or imprisonment, or both, such term as applied  
17 to association shall mean the partners or members thereof and  
18 as applied to corporation shall mean the officers thereof,  
19 except as to incorporated clubs the term person shall mean  
20 such individual or individuals who, under the bylaws of such  
21 clubs, shall have jurisdiction over the possession and sale of  
22 liquor therein.

23 "(21)(23) POPULATION. The population according to  
24 the last preceding or any subsequent decennial census of the  
25 United States, except where a municipality is incorporated  
26 subsequent to the last census, in which event, its population  
27 until the next decennial census shall be the population of the

1 municipality as determined by the judge of probate of the  
2 county as the official population on the date of its  
3 incorporation.

4 "~~(22)~~(24) RESTAURANT. A reputable place licensed as  
5 a restaurant, operated by a responsible person of good  
6 reputation and habitually and principally used for the purpose  
7 of preparing and serving meals for the public to consume on  
8 the premises.

9 "~~(23)~~(25) MEAL. A diversified selection of food some  
10 of which is not susceptible of being consumed in the absence  
11 of at least some articles of tableware and which cannot be  
12 conveniently consumed while one is standing or walking about.

13 "~~(24)~~(26) RETAILER. Any person licensed by the board  
14 to engage in the retail sale of any alcoholic beverages to the  
15 consumer.

16 "~~(25)~~(27) SALE or SELL. Any transfer of liquor, wine  
17 or beer for a consideration, and any gift in connection with,  
18 or as a part of, a transfer of property other than liquor,  
19 wine or beer for a consideration.

20 "~~(26)~~(28) SELLING PRICE. The total marked-up price  
21 of spirituous or vinous liquors sold by the board, exclusive  
22 of taxes levied thereon.

23 "~~(27)~~(29) UNOPENED CONTAINER. A container containing  
24 alcoholic beverages, which has not been opened or unsealed  
25 subsequent to filling and sealing by the manufacturer or  
26 importer.

1           "~~(28)~~(30) WET COUNTY. Any county which by a majority  
2 of those voting voted in the affirmative in an election  
3 heretofore held in accordance with the statutes applicable at  
4 the time of the election or may hereafter vote in the  
5 affirmative in an election or special method referendum held  
6 in accordance with the provisions of Chapter 2 of this title,  
7 or other statutes applicable at the time of the election.

8           "~~(29)~~(31) WET MUNICIPALITY. Any municipality in a  
9 dry county which by a majority of those voting voted in the  
10 affirmative in a municipal option election heretofore or  
11 hereafter held in accordance with the provisions of Act  
12 84-408, Acts of Alabama 1984, appearing as Chapter 2A of this  
13 title, as amended, or any act hereafter enacted permitting  
14 municipal option election, or any municipality which became  
15 wet by vote of the governing body or by the voters of the  
16 municipality heretofore or hereafter held under the special  
17 method referendum provisions of Section 28-2-22, or as  
18 hereafter provided, where the county has become dry subsequent  
19 to the elected wet status of the municipality.

20           "~~(30)~~(32) WHOLESALER. Any person licensed by the  
21 board to engage in the sale and distribution of table wine and  
22 beer, or either of them, within this state, at wholesale only,  
23 to be sold by export or to retail licensees or other wholesale  
24 licensees or others within this state lawfully authorized to  
25 sell table wine and beer, or either of them, for the purpose  
26 of resale only.

1           "~~(31)~~(33) WINE. All beverages made from the  
2           fermentation of fruits, berries, or grapes, with or without  
3           added spirits, and produced in accordance with the laws and  
4           regulations of the United States, containing not more than 24  
5           percent alcohol by volume, and shall include all sparkling  
6           wines, carbonated wines, special natural wines, rectified  
7           wines, vermouths, vinous beverages, vinous liquors, and like  
8           products, including restored or unrestored pure condensed  
9           juice.

10           "~~(32)~~(34) TABLE WINE. Except as otherwise provided  
11           in this subdivision, any wine containing not more than 24  
12           percent alcohol by volume. Table wine does not include any  
13           wine containing more than sixteen and one-half percent alcohol  
14           by volume that is made with herbs or flavors, except vermouth,  
15           or is an imitation or other than standard wine. Table wine is  
16           not liquor, spirituous, or vinous.

17           "~~(33)~~(35) BRANDY. All beverages which are an  
18           alcoholic distillate from the fermented juice, mash, or wine  
19           of fruit, or from the residue thereof, produced in such manner  
20           that the distillate possesses the taste, aroma, and  
21           characteristics generally attributed to the beverage, as  
22           bottled at not less than 80 degree proof."

23           Section 3. Although this bill would have as its  
24           purpose or effect the requirement of a new or increased  
25           expenditure of local funds, the bill is excluded from further  
26           requirements and application under Amendment 621, now  
27           appearing as Section 111.05 of the Official Recompilation of

1 the Constitution of Alabama of 1901, as amended, because the  
2 bill defines a new crime or amends the definition of an  
3 existing crime.

4 Section 4. This act shall become effective  
5 immediately following its passage and approval by the  
6 Governor, or its otherwise becoming law.