

1 HB175  
2 105072-4  
3 By Representative Martin (N & P)  
4 RFD: Tourism and Travel  
5 First Read: 03-FEB-09  
6 PFD: 01/28/2009

1  
2 ENROLLED, An Act,

3 Relating to the sale of alcoholic beverages; to  
4 amend Sections 28-2A-1 and 28-2A-3, Code of Alabama 1975, and  
5 to repeal Section 28-2A-4, Code of Alabama 1975, relating to  
6 municipal option elections, to allow any municipality having a  
7 population of 1000 or more, excluding Clay, Randolph, and  
8 Blount Counties, to hold a municipal option election and to  
9 amend Section 28-3A-23, relating to licenses of retail  
10 operations selling alcoholic beverages, to provide that any  
11 retail operation selling alcoholic beverages existing on the  
12 effective date of this amendatory act would be allowed to  
13 obtain dual licenses, both club or lounge and restaurant.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Sections 28-2A-1 and 28-2A-3, Code of  
16 Alabama 1975, are amended to read as follows:

17 "§28-2A-1.

18 "(a) Any municipality having a population of ~~7,000~~  
19 ~~500~~ 1,000 or more, excluding Clay and Randolph Counties,  
20 ~~excluding Blount County,~~ Clay, Randolph, and Blount Counties,  
21 may change its classification from dry to wet or wet to dry by  
22 a municipal option election, in the following manner:

23 "(b) Upon petition of ~~25 percent~~ 30 percent of the  
24 number of voters voting in the last preceding general election  
25 of the municipality being filed with the city or town clerk or  
26 governing body of said municipality, said governing body must

1 call a municipal option election for said municipality to  
2 determine the sentiment of the people as to whether or not  
3 alcoholic beverages can be legally sold or distributed in said  
4 municipality. Said petition for municipal option election  
5 shall contain the following: "It is petitioned that a  
6 municipal option election be held to permit the legal sale and  
7 distribution of alcoholic beverages within this municipality."  
8 On the ballot to be used for such municipal option election,  
9 the question shall be in the following form: "Do you favor the  
10 legal sale and distribution of alcoholic beverages within this  
11 municipality? Yes \_\_\_\_\_ No \_\_\_\_\_." Each subsequent municipal  
12 option election must follow the petition process as provided  
13 in this subsection with a new petition.

14 "(c) Said municipal option election shall be held  
15 and the officers appointed to hold same in the manner provided  
16 by law for holding other municipal elections and the returns  
17 thereof tabulated and the results certified as provided by law  
18 for such municipal elections. Said municipal option election  
19 shall be held at the time of the primary, general, county-wide  
20 or municipal election next succeeding the date of the filing  
21 of said petition, provided, however, said election shall not  
22 be held within less than 30 days from the date of the filing  
23 of said petition. Notice of said municipal option election  
24 shall be given by the governing body of the municipality by

1 publication at least three weeks before the date of election,  
2 in a newspaper in the municipality, or, if there be none, in a  
3 newspaper in the county, or, if there be neither, by posting  
4 such notice at the town or city hall, apprising the voters of  
5 the municipality that a municipal option election shall be  
6 held to determine whether such municipality shall be wet or  
7 dry under this article. The cost of said municipal option  
8 election, including the cost of notice by publication, shall  
9 be paid out of the general fund of the municipality.

10 "(d) Only qualified voters shall vote in said  
11 municipal option election. If a majority of the voters in said  
12 municipal option election vote "yes," said municipality shall  
13 be wet, and alcoholic beverages can be legally sold,  
14 distributed and consumed within the corporate limits of said  
15 municipality, and all of the provisions of Title 28, relating  
16 to alcoholic beverages in wet counties, including Chapters 3,  
17 3A, 6 and 7, shall be immediately put into operation with  
18 respect to and effective within the corporate limits of said  
19 municipality. Said municipality shall remain wet until said  
20 municipality shall be in subsequent municipal option election  
21 held under this article changed to a dry municipality,  
22 notwithstanding the results of any subsequent county election  
23 or special method referendum. All other laws to the contrary  
24 notwithstanding, the electors residing within the corporate  
25 limits of any such municipality that has become wet pursuant  
26 to a municipal option election held under this article shall

1 not be entitled to vote in any subsequent county election or  
2 special method referendum held to determine if the county in  
3 which such municipality is located shall become wet. The  
4 question of whether such county shall become wet shall be  
5 decided by the electors of such county residing outside the  
6 corporate limits of such wet municipality as otherwise  
7 provided by law.

8 "(e) If a majority of the voters voting in said  
9 municipal option election vote "no," said municipality shall  
10 be a dry municipality under the terms of this article until  
11 the county shall by subsequent election or special referendum,  
12 vote wet, or the municipality shall by a subsequent municipal  
13 option election held under this article, vote wet.

14 "(f) Said municipal option election in said  
15 municipality may be held at the time of any primary, general,  
16 county-wide or municipal election as determined by the county  
17 commission or the municipal governing body, as applicable,  
18 ~~provided a period of not less than 720 days must elapse~~  
19 ~~between the dates of such municipal option elections; provided~~  
20 ~~further, that a county or municipal wet-dry election or~~  
21 provided a period of not less than 720 days must elapse  
22 between the dates of such municipal option elections; provided  
23 further, that a county wet-dry election or special method  
24 referendum may be held at any time without regard to the lapse

1 of time between the dates of any county ~~or municipal~~ option  
2 elections.

3 "§28-2A-3.

4 "It is hereby declared the intention and the purpose  
5 of this article to permit an election by the citizens of  
6 certain municipalities to determine the wet or dry status of  
7 such municipalities with regard to the sale, distribution and  
8 consumption of alcoholic beverages within the corporate limits  
9 of such municipalities; and further that such election shall  
10 be provided only in those municipalities which can provide  
11 safeguards for the protection of the public welfare, health,  
12 peace and morals of the people. In the furtherance of the  
13 protection of the public welfare, health, peace and morals,  
14 the Legislature has determined that a population  
15 classification should be established to provide this method of  
16 municipal option election only in those municipalities with a  
17 population of ~~7,000-500~~ 1000 or more people within a county,  
18 excluding Clay and Randolph Counties, excluding Blount County,  
19 it being the judgment of the Legislature that municipalities  
20 with a lesser population would be unable to support and  
21 maintain such protection where such municipality is located in  
22 a dry county, whereas a municipality of ~~7,000~~ 500 or more  
23 population would have the resources and ability to support and  
24 maintain such safeguards."

25 Section 2. Section 28-3A-23, Code of Alabama 1975,  
26 is amended to read as follows:

"§28-3A-23.

"(a) No license prescribed in this code shall be issued or renewed until the provisions of this code have been complied with and the filing and license fees other than those levied by a municipality are paid to the board.

"(b) Licenses shall be granted and issued by the board only to reputable individuals, to associations whose members are reputable individuals, or to reputable corporations organized under the laws of the State of Alabama or duly qualified thereunder to do business in Alabama, or, in the case of manufacturers, duly registered under the laws of Alabama, and then only when it appears that all officers and directors of the corporation are reputable individuals.

"(c) Every license issued under this code shall be constantly and conspicuously displayed on the licensed premises.

"(d) Each retail liquor license application must be approved by the governing authority of the municipality if the retailer is located in a municipality, or by the county commission if the retailer is located in the county and outside the limits of the municipality before the board shall have authority to grant the license.

"(e) Any retailer may be granted licenses to maintain, operate or conduct any number of places for the sale

1 of alcoholic beverages, but a separate license must be secured  
2 for each place where alcoholic beverages are sold. No retail  
3 license issued under this code shall be used for more than one  
4 premise, nor for separate types of operation on the same  
5 premise. Provided, however, any such licensed retail operation  
6 existing on the effective date of this amendatory act and  
7 operating based on dual licenses, both a club or lounge  
8 license and a restaurant license, on the same premises shall  
9 be exempt from the requirement of the preceding sentence and  
10 may continue to operate under such dual licenses. The  
11 provisions of any rule promulgated by the board relating to  
12 the requirements concerning such dual licenses, both a club or  
13 lounge license and a restaurant license, shall not apply to  
14 any such retail operation existing on the effective date of  
15 this act. The aforementioned rules shall include, but not be  
16 limited to the maintenance of separate books, separate  
17 entrances, and separate inventories. Each premise must have a  
18 separate retail license. Where more than one retail operation  
19 is located within the same building, each such operation under  
20 a separate or different ownership is required to obtain a  
21 separate retail license; and where more than one type of  
22 retail operation located within the same building is operated  
23 by the same licensee, such licensee must have a license for  
24 each type of retail operation. Provided, there shall be no  
25 licenses issued by the board for the sale of liquor, beer or  
26 wine by rolling stores.



1           "(f) No retailer shall sell any alcoholic beverages  
2 for consumption on the licensed premises except in a room or  
3 rooms or place on the licensed premises at all times  
4 accessible to the use and accommodation of the general public;  
5 but this section shall not be interpreted to prevent a hotel  
6 or club licensee from selling such beverages in any room of  
7 such hotel or club house occupied by a bona fide registered  
8 guest or member or private party entitled to purchase the  
9 same.

10           "(g) All beer, except draft or keg beer, sold by  
11 retailers must be sold or dispensed in bottles, cans or other  
12 containers not to exceed one pint or 16 ounces. All wine sold  
13 by retailers for off-premise consumption must be sold or  
14 dispensed in bottles or other containers in accordance with  
15 the standards of fill specified in the then effective  
16 standards of fill for wine prescribed by the U.S. Treasury  
17 Department.

18           "(h) Draft or keg beer may be sold or dispensed  
19 within this state within those counties in which and in the  
20 manner in which the sale of draft or keg beer was authorized  
21 by law on September 30, 1980 or in which the sale of draft or  
22 keg beer is hereafter authorized by law; provided in rural  
23 communities with a predominantly foreign population, after the  
24 payment of the tax imposed by this title, draft or keg beer

1 may be sold or dispensed by special permit from the board,  
2 when, in the judgment of the board, the use and consumption of  
3 draft or keg beer is in accordance with the habit and customs  
4 of the people of any such rural community; provided further,  
5 the board may, in its discretion, grant to any civic center  
6 authority or its franchisee or concessionaire, to which the  
7 board may have issued or may simultaneously issue a retail  
8 license under the provisions of this code, a revocable  
9 temporary permit to sell or dispense in any part of its civic  
10 center, for consumption therein, draft or keg beer. Either  
11 such permit shall be promptly revoked by the board if, in its  
12 judgment, the same tends to create intemperance or is  
13 prejudicial to the welfare, health, peace, temperance and  
14 safety of the people of the community or of the state.

15 "(i) No importer shall sell alcoholic beverages to  
16 any person other than a wholesaler licensee, or sell to a  
17 wholesaler licensee any brand or brands of alcoholic beverages  
18 for sale or distribution in this state, except where the  
19 importer has been granted written authorization from the  
20 manufacturer thereof to import and sell the brand or brands to  
21 be sold in the State of Alabama, which authorization is on  
22 file with the board.

23 "(j) No wholesaler shall maintain or operate any  
24 place where sales are made other than that for which the  
25 wholesale license is granted; provided, however, a wholesaler  
26 may be licensed to sell and distribute liquor, wine and beer.

1 No wholesaler shall maintain any place for the storage of  
2 liquor, wine or beer unless the same has been approved by the  
3 board. No wholesaler license shall be issued for any premises  
4 in any part of which there is operated any retail license for  
5 the sale of alcoholic beverages.

6 "(k) Licenses issued under this code may not be  
7 assigned. The board is hereby authorized to transfer any  
8 license from one person to another, or from one place to  
9 another within the same governing jurisdiction, or both, as  
10 the board may determine; but no transfers shall be made to a  
11 person who would not have been eligible to receive the license  
12 originally, nor for the transaction of business at a place for  
13 which the license could not originally have been issued  
14 lawfully.

15 "(l) Every applicant for a transfer of a license  
16 shall file a written application with the board within such  
17 time as the board shall fix in its regulations. Whenever any  
18 license is transferred, there shall be collected a filing fee  
19 of \$50.00, to be paid to the board, and the board shall pay  
20 such fee into the State Treasury to the credit of the Beer Tax  
21 and License Fund of the board.

22 "(m) In the event that any person to whom a license  
23 shall have been issued under the terms of this code shall  
24 become insolvent, make an assignment for the benefit of

1 creditors, be adjudicated a bankrupt by either voluntary or  
2 involuntary action, the license of such person shall  
3 immediately terminate and be cancelled without any action on  
4 the part of the board, and there shall be no refund made, or  
5 credit given, for the unused portion of the license fee for  
6 the remainder of the license year for which said license was  
7 granted. Thereafter no license shall be issued by the board  
8 for the premises, wherein said license was conducted, to any  
9 assignee, committee, trustee, receiver or successor of such  
10 licensee until a hearing has been held by the board as in the  
11 case of a new application for license. In all such cases, the  
12 board shall have the sole and final discretion as to the  
13 propriety of the issuance of a license for such premises, and  
14 the time it shall issue, and the period for which it shall be  
15 issued, and shall have the further power to impose conditions  
16 under which said licensed premises shall be conducted."

17           Section 3. All laws or parts of laws which conflict  
18 with this act are repealed and specifically Section 28-2A-4,  
19 Code of Alabama 1975, is repealed.

20           Section 4. This act shall become effective  
21 immediately following its passage and approval by the  
22 Governor, or its otherwise becoming law.  
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24

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 12-MAR-09, as amended.

Greg Pappas  
Clerk

Senate	21-APR-09	Amended and Passed
House	21-APR-2009	Concurred in Senate Amendment
House	30-APR-09	Passed, the Governor's objections to the contrary notwithstanding
		Yeas 54, Nays 19, Abstains 10
Senate	14-MAY-09	Passed, the Governor's objections to the contrary notwithstanding
		Yeas 18, Nays 11, Abstains 0