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### MEMORANDUM

TO: Alabama Alcohol Beverage Study Commission  
FROM: Michael Hill  
SUBJECT: General Background on Alabama Alcohol Regulation  
DATE: May 14, 2015

This memorandum summarizes Alabama's legal framework for regulating alcohol.

#### **I. Alcohol Control**

The Twenty-first Amendment to the U.S. Constitution ended federal alcohol Prohibition in 1933 and returned authority to regulate alcohol to the states.

##### **A. Wet v. Dry**

Every county in Alabama is designated as either "wet" or "dry," depending on whether alcohol may legally be manufactured, sold, or distributed within the county, as determined by referendum in each county. Wet counties have elected to allow the sale and distribution of alcoholic beverages;<sup>1</sup> dry counties prohibit it.<sup>2</sup> Municipalities within dry counties may elect by referendum to allow alcoholic beverage sales and distribution; these municipalities are designated wet municipalities. Similarly, municipalities within wet counties that elect to allow alcohol sales and distribution are called dry municipalities.

Currently, twenty-five Alabama counties are dry counties. Twenty-four of the twenty-five have at least one wet municipality within their borders. Only Clay County is fully dry. No wet counties have dry municipalities.<sup>3</sup>

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<sup>1</sup> ALA. CODE ANN. § 28-3-1(30), (31) (2014) (defining "wet county" and "wet municipality").

<sup>2</sup> *Id.* § 28-3-1(10), (11) (defining "dry county" and "dry municipality").

<sup>3</sup> Alabama Alcohol Beverage Control Bd, Wet-Dry Map, [http://www.abcboard.state.al.us/\(S\(2c5tqigyzsmszia2yh3m4y2k\)\)/wet\\_dry\\_map.aspx](http://www.abcboard.state.al.us/(S(2c5tqigyzsmszia2yh3m4y2k))/wet_dry_map.aspx) (last visited May 14, 2015).

Although the manufacture, sale, and distribution of alcohol is generally prohibited in dry counties and municipalities, there are limited exceptions for medical purposes<sup>4</sup> and for religious purposes.<sup>5</sup> In addition, it is legal to possess (in one's home or vehicle) a small amount of legally purchased alcohol for personal use.<sup>6</sup>

## **B. Alcohol Beverage Control Board**

In wet counties and municipalities, the distribution and sale of alcohol is controlled by the Alcohol Beverage Control Board (ABC Board).<sup>7</sup> The Alabama Code defines alcoholic beverages to include:

Any alcoholic, spirituous, vinous, fermented, or other alcoholic beverage, or combination of liquors and mixed liquor, a part of which is spirituous, vinous, fermented, or otherwise alcoholic, and all drinks or drinkable liquids, preparations or mixtures intended for beverage purposes, which contain one-half of one percent or more of alcohol by volume, and shall include liquor, beer, and wine.<sup>8</sup>

The ABC Board regulates the manufacture, importation, distribution, sale, and use of alcoholic beverages in the state. The ABC Board effectuates its control through distribution, licensing, and enforcement. “[T]ransactions in liquor and alcohol and malt or brewed beverages which take place wholly within the state, except by and under the control of the [ABC B]oard” are prohibited.<sup>9</sup>

## **II. Three-Tier System**

Alabama, like other states,<sup>10</sup> established a three-tier system of state alcohol regulation. The three-tier system divides the alcohol industry into three separate and distinct levels: 1) manufacturers, 2) wholesalers (distributors), and 3) retailers. Manufacturers provide alcohol to wholesalers, who distribute it to retailers, who sell it directly to consumers.

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<sup>4</sup> ALA. CODE ANN. § 28-4-150.

<sup>5</sup> *Id.* § 28-4-180.

<sup>6</sup> *Id.* § 28-4-200 (explaining that alcohol possessed in a vehicle may not be kept in the passenger area or in view of any passenger).

<sup>7</sup> *Id.* § 28-3-43 (describing the functions, powers and duties of the ABC Board). Alabama is one of seventeen states (plus jurisdictions in four other states) that is classified as a control jurisdiction. Nat'l Alcohol Beverage Control Ass'n, The Control Systems, <http://www.nabca.org/States/States.aspx> (last visited May14, 2015). Control jurisdictions exercise a government monopoly over the wholesaling or retailing of some or all alcoholic beverages. William C. Green, *Creating a Common Market for Wine: Boutique Wines, Direct Shipment, and State Alcohol Regulation*, 39 OHIO N.U. L. REV. 13, 22-23 (2012).

<sup>8</sup> ALA. CODE ANN. § 28-3-1(1) (2014).

<sup>9</sup> *Id.* § 28-3-2(b).

<sup>10</sup> Thomas E. Rutledge & Micah C. Daniels, *Who's Selling the Next Round: Wines, State Lines, the Twenty-First Amendment and the Commerce Clause*, 33 N. KY. L. REV. 1, 22 (2006) (“With the end of Prohibition, all states enacted a ‘three-tier’ system in order to maximize their control over what had been the mob-run liquor empires.”).

With limited exceptions, entities and individuals licensed to operate in one of the three tiers are prohibited from operating in either of the other two tiers.<sup>11</sup> In addition, entities and individuals licensed to operate in one of the three tiers are prohibited from having any interest in an entity licensed to operating in either of the two other tiers.<sup>12</sup>

## A. Manufacturers

Manufacturers are the first tier of the three-tier alcohol distribution system. A manufacturer is “[a]ny person, association, or corporation engaged in the producing, bottling, manufacturing, distilling, rectifying, or compounding of alcoholic beverages, liquor, beer, or wine in this state or for sale or distribution in this state or to the board or to a licensee of the board.”<sup>13</sup> Manufacturers must obtain a license from the ABC Board to operate within the state of Alabama.<sup>14</sup>

Alcohol manufacturers are generally allowed to sell alcohol only to wholesalers – and not directly to retailers or to consumers.<sup>15</sup> There are, however, a number of exceptions. Manufacturers may conduct tastings or samplings of alcoholic beverages at the manufacturer’s licensed premises.<sup>16</sup> In addition, manufacturers of table wine in Alabama may, on their manufacturing premises only, sell their table wine directly to consumers.<sup>17</sup>

Brewpubs offer another exception. A licensed brewpub may manufacture beer and sell it directly to consumers for consumption at the brewpub. To qualify for a license, a brewpub must be located in a historic building, a historic district, or an economically distressed area and must be in a county where beer was brewed for public consumption prior to the ratification of the Eighteenth Amendment to the U.S. Constitution. Brewpubs must brew no more than 10,000

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<sup>11</sup> ALA. CODE ANN. § 28-3-4(a) (“No manufacturer . . . shall at the same time be a distributor, wholesaler or retail dispenser . . . .”); *id.* § 28-3-4(b) (“No distributor or wholesaler . . . shall at the same time be a manufacturer or retailer . . . .”); *id.* § 28-7-22 (“No manufacturer . . . shall, at the same time, be a wholesaler or retailer . . . of any wine wholesaler or retailer . . . .”).

<sup>12</sup> *Id.* §§ 28-3-4; 28-7-22.

<sup>13</sup> ALA. CODE ANN. § 28-3-1(18) (2014).

<sup>14</sup> *Id.* § 28-1-1 (“In all counties of the state it shall be unlawful for any person, firm or corporation to have in his or its possession any still or apparatus to be used for the manufacture of any alcoholic beverage of any kind . . . .”); *id.* § 28-3A-6 (providing for licenses to “authorize the licensee to manufacture or otherwise distill, produce, ferment, brew, bottle, rectify, or compound alcoholic beverages”; *id.* § 28-7-11 (2014) (providing for wine manufacturers licenses).

<sup>15</sup> *Id.* § 28-3A-6 (“No manufacturer licensee shall sell any alcoholic beverages direct to any retailer or for consumption on the premises where sold . . . .”); *id.* § 28-7-4(1) (2014) (“A licensed wine manufacturer may sell table wine to any wine wholesaler or importer licensed to sell wine or to the board”); *id.* § 28-7-4(1) (requiring wine manufacturers to obtain a license from the ABC Board to sell wine); *id.* § 28-7-18 (“[T]able wine which is manufactured in Alabama may be sold directly at retail by the licensed manufacturer only on the manufacturer’s premises, or on-premise or off-premise consumption.”).

<sup>16</sup> *Id.* § 28-3A-6(h)(1).

<sup>17</sup> *Id.* § 28-7-18.

barrels of beer a year and must contain and operate a restaurant on the premises. Licensed brewpubs may sell beer directly to consumers for on-premises consumption only. Brewpubs may also sell their beer for off-site consumption to wholesalers, who can then sell it to retailers. The brewpub cannot bottle its own beer, but must sell its beer to retailers in the original barrels or kegs.<sup>18</sup>

Additionally, the law allows limited home brewing of beer, mead, cider, and table wine for personal consumption. Home brewers must be over twenty-one years of age, must not be felons, and must reside in a wet county or a wet municipality. Home brewers are prohibited from selling their home brewed beverages. In addition, home brewers may not produce more than fifteen gallons of beer, mead, cider, and table wine for each quarter of the year and must not have more than fifteen gallons of home brewed beverage in any legal residence at any one time.<sup>19</sup>

Importers, who import alcoholic beverages manufactured outside the United States into Alabama for sale or distribution,<sup>20</sup> are also required to get a license from the ABC Board to import alcoholic beverages into Alabama. A license authorizes the importer to sell liquor or wine to the ABC Board or to sell table wine and beer to licensed Alabama wholesalers. Importers may not sell alcoholic beverages directly to consumers.<sup>21</sup>

It is unlawful for manufacturers, importers, and wholesalers to sell or trade alcoholic beverages between 9:00 o'clock p.m. Saturday and 2:00 o'clock a.m. the following Monday.<sup>22</sup>

## **B. Wholesalers (Distributors)**

Wholesalers are the second tier of the three-tier system. A wholesaler is:

Any person licensed by the board to engage in the sale and distribution of table wine and beer, or either of them, within this state, at wholesale only, to be sold by export or to retail licensees or other wholesale licensees or others within this state lawfully authorized to sell table wine and beer, or either of them, for the purpose of resale only.<sup>23</sup>

Wholesalers must be licensed by the ABC Board to buy and sell alcoholic beverages in Alabama.<sup>24</sup>

Liquor wholesalers may import and receive liquor and wine from outside the state and sell wine at wholesale, to licensed retailers, or to the ABC Board. However, liquor wholesalers

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<sup>18</sup> *Id.* § 28-4A-3.

<sup>19</sup> *Id.* § 28-4B-1.

<sup>20</sup> *Id.* § 28-3-1(15).

<sup>21</sup> *Id.* §§ 28-3A-7(a)-(b);28-7-10(b).

<sup>22</sup> *Id.* § 28-3A-25(a)(1).

<sup>23</sup> ALA. CODE ANN. § 28-3-1(32) (2014).

<sup>24</sup> *Id.* §§ 28-3A-8 (liquor); 28-3A-9 (beer or table wine)

may sell liquor only to the ABC Board.<sup>25</sup> Beer and table wine wholesalers may bring beer and table wine from outside the state or purchase beer and table wine from in-state manufacturers or distributors; they may export the beer or wine outside the state or sell it to all licensees within the state authorized to sell beer and table wine.<sup>26</sup> Wholesalers are not allowed sell alcoholic beverages directly to consumers.

Each alcoholic beverage manufacturer or importer licensed by the ABC Board to sell alcoholic beverages in Alabama is required to designate exclusive territories for each of its brands within the state and name one licensed wholesaler for each territory. The territorial agreements between a manufacturer or importer and a wholesaler must be filed with the ABC Board. The agreements may not set a resale price for the alcoholic beverages.<sup>27</sup> Wholesalers are prohibited from selling beer outside their exclusive territory.

The ABC Board maintains exclusive wholesale control of fortified wines and spirits. Licensed retailers may purchase alcoholic beverages in excess of 14.9% alcohol by volume only from an ABC Board wholesale store.<sup>28</sup>

### **C. Retailers**

Retailers are the third tier of the three-tier system. A retailer is “[a]ny person licensed by the board to engage in the retail sale of any alcoholic beverages to the consumer.”<sup>29</sup> The ABC Board issues licenses for retail outlets to sell table wine and beer for on-site as well as off-site consumption.<sup>30</sup> The ABC Board also issues liquor licenses for on-premises consumption for lounges,<sup>31</sup> clubs,<sup>32</sup> hotels, restaurants, civic center authorities, dinner theaters,<sup>33</sup> special events,<sup>34</sup> railroads, airlines, bus lines and other common carriers,<sup>35</sup> international motor speedways,<sup>36</sup> state parks, racing commissions, fair authorities, airport authorities,<sup>37</sup> and airport terminal

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<sup>25</sup> *Id.* § 28-3A-8.

<sup>26</sup> *Id.* § 28-3A-9.

<sup>27</sup> *Id.* § 28-8-2.

<sup>28</sup> ALA. ADMIN. CODE r. 20-X-6-.04 (4) (2010).

<sup>29</sup> ALA. CODE ANN. § 28-3-1(26).

<sup>30</sup> *Id.* § 28-3A-14-17.

<sup>31</sup> *Id.* § 28-3A-11.

<sup>32</sup> *Id.* § 28-3A-12.

<sup>33</sup> *Id.* § 28-3A-13.

<sup>34</sup> *Id.* § 28-3A-20.

<sup>35</sup> *Id.* § 28-3A-18.

<sup>36</sup> *Id.* § 28-3A-19.1.

<sup>37</sup> *Id.* § 28-3A-19.

concessionaires.<sup>38</sup> “Package stores” that sell alcoholic beverages for off-site consumption are licensed as either clubs or lounges.<sup>39</sup>

Every retail license must be approved by the governing authority of the municipality if the retailer is in a municipality or by the county commission if the retailer is outside a municipality.<sup>40</sup> All beer, except draft or keg beer, sold by retailers must be sold in bottles or cans no bigger than 25.4 ounces.<sup>41</sup> Draft or keg beer may only be sold in counties where it is authorized by law or allowed by special permit as authorized by the ABC Board.<sup>42</sup>

In addition to licensed retailers, the ABC Board operates state liquor stores which sell liquor and wine directly to consumers. The number of state liquor stores and their locations in proximity to schools and courthouses are limited by law.<sup>43</sup> Alcohol consumption at the ABC liquor stores is prohibited.<sup>44</sup>

Retail alcohol sales are generally not permitted on Sundays after 2:00 o’clock p.m.<sup>45</sup> except where authorized by local act or general act of local application.<sup>46</sup>

Licensees can purchase liquor and wine from the ABC Board and purchase table wine and beer from wholesalers. Licensees are permitted to dispense alcoholic beverages to patrons, guests, or members. The ABC Board may also designate entertainment districts in cities that allow open containers in the designated district that would otherwise not be allowed.<sup>47</sup>

Direct sales of alcoholic beverages from out of state manufacturers or suppliers to consumers in Alabama are prohibited. Such orders must go through the ABC Board.<sup>48</sup>

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<sup>38</sup> *Id.* § 4-32A-19.

<sup>39</sup> ALA. ADMIN. CODE r. 20-X-5-.13 (2010).

<sup>40</sup> ALA. CODE ANN. § 28-3A-23(d) (2014).

<sup>41</sup> *Id.* § 28-3A-23(g).

<sup>42</sup> *Id.* § 28-3A-23(h).

<sup>43</sup> *Id.* § 28-3-17.

<sup>44</sup> *Id.* § 28-3A-25(a)(4)

<sup>45</sup> *Id.* §§ 28-3A-19; 28-3A-20.

<sup>46</sup> *Id.* § 28-3A-25(a)(19)-(20).

<sup>47</sup> *Id.* § 28-3A-17.1.

<sup>48</sup> *Id.* § 28-1-4.