

Alabama Alcoholic Beverage Control Board
2715 Gunter Park Drive West
Montgomery, Alabama 36109

August 9, 2016

Consideration for 20-X-9-.04: Record-Keeping Requirements for In-State Manufacturers of Beer, Wine, and Spirits, and Brew Pubs

To Whom It May Concern,

We appreciate the opportunity to provide input on the proposed action to adopt 20-X-9-.04. We applaud the ABC for taking the initiative in modernizing its rules and regulations to reflect the recently enacted law as well as the realities of a changing legislative and business landscape. However, we respectfully request that the Board consider concerns with this particular proposal.

1. Monthly reporting of detailed customer information

Section 1(b)(3) of this proposal requires monthly reporting of sensitive customer information.

Off-premise sales reporting shall include the purchaser's name, address, telephone number, date of birth, and shall be subject to verification by the ABC Board.

The justification for requiring collection and reporting of this information appears to be to ensure compliance with §§ 28-3A-6 (h) (2) and 28-4A-3 (a) of the Alabama Code.¹ We ask the Board to consider the negative impact this requirement would have on businesses, consumers, and the ABC Board.

A. Collecting this information creates a liability for both the licensee and the ABC to protect sensitive information of thousands of private citizens

Recent data breaches at large companies have brought attention to the danger associated with maintaining sensitive customer data. In addition to cyber threats, the nature of off-premise sales means that multiple employees on each shift will be required to collect sensitive personal data in a public and busy location. This greatly increases the potential for unauthorized release of this information.

This proposal would create immediate costs to the licensee for liability insurance as well as technologies and processes associated with collecting, storing, and reporting such sensitive information.

Additionally, both the ABC and the licensee may be at risk of litigation under this proposal, either in the event of unauthorized release or from a preemptive lawsuit from a privacy rights organization.

¹ Beer sold for off-premise consumption by brewpubs and manufacturers may not exceed 288 ounces per customer per day in Alabama.

B. Requiring this information from customers would negatively impact business

Because of the publicity surrounding large data breaches and the reasonable privacy concerns of private citizens of Alabama and other jurisdictions, many customers are likely to opt out of potential purchases.

C. There are less invasive alternatives for enforcement

The ABC Board is compelled to enforce the law. However, we respectfully ask the ABC Board to consider alternative ways to enforce the transaction limits for beer manufacturers and brewpubs in Alabama.

i. Performance standards instead of design standards

In regulated environments, performance standards focus on outcomes while design standards specify the exact process a regulated entity must execute. Either approach may be appropriate on a case-by-case basis, but performance standards allow for flexibility while still holding the regulated entity accountable to regulators.

We ask the ABC Board to establish a performance standard, namely that the licensee is responsible for taking reasonable measures to prevent customers from making purchases of more than 288 ounces of beer per day, rather than designing a process of compliance.

ii. Periodic audits can uncover violations

Licensees are subject to inspection and audit of business records at any time. Ala. Code § 28-3A-6(f). A review of receipts and transactions could uncover violations of the transaction limit.

iii. Notices at or near cash registers can be used to inform citizens of the law

Most consumers will accept and obey a restriction on beer sales, and a simple notice would likely produce substantial voluntary compliance and will be an ongoing reminder to employees of their obligation to enforce the restriction.

iv. Undercover operatives can be used to verify compliance

To ensure compliance of underage drinking laws, the ABC Board utilizes minor operatives who attempt to purchase alcohol from licensees in undercover operations.

It would be less burdensome to the ABC to utilize adult personnel to attempt to purchase an amount of beer that exceeds the lawful amount. This would hold licensees accountable to the ABC Board while avoiding concerns about privacy, liability, and negative business impacts.

2. Monthly reporting of production by contract brewery

Section 2(a) introduces new reporting requirements for beer brewed under contract. We appreciate the clarification of this requirement.

Further, we ask that the new forms include separate sheets or line items to capture beer brewed under contract and transferred to the licensee. This allows internal reviews of the licensee's monthly ABC reports against their quarterly TTB reports.

3. Reporting daily retail sales

Sections 1(b)(1) and (2) would require that brewers include a daily breakdown of the quantities and containers of beer sold at retail in their monthly reporting. While brewers currently provide this in practice, we ask the Board to consider if such a granular report is necessary.

Brewers pay excise taxes on these sales each month. A daily breakdown of sales totals is not necessary to calculate the tax owed, and it presents a burdensome reporting requirement for the business. ABC personnel can require such information if it is sometimes necessary for auditing purposes.

We respectfully ask the Board to amend this provision to require only monthly totals of retail sales.

Thank you again for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Roberts', with a stylized flourish extending to the right.

Dan Roberts, Executive Director