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Mission

The ABLA is a non-profit trade association dedicated to serving the needs of the retailers licensed to serve beverage alcohol in the State of Alabama.

Brandon Owens
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Alabama Beverage Licensees Association

ABC BOARD TAKES ILLEGAL ACTION WITH IMPLICATIONS OF PUTTING HUNDREDS OF PRIVATE PACKAGE STORES OUT OF BUSINESS

MONTGOMERY- The Alabama Beverage Licensees Association (ABLA) presented a case to the Alabama ABC Board (ABC) asking them to change their unlawful plans regarding delivery. In 2021, Governor Ivey signed the Alcohol Delivery Bill, now Alabama Code Section 28-3A-13.1, allowing limited amounts of beer, wine, and liquor to be delivered from licensees such as restaurants and private package stores. Alabama ABC retail stores are not licensees under current law. Unlike licensees, ABC stores are not required to get local governing authority to open an ABC store and are not required to pay local sales or liquor tax, which can be more than fifteen percent in some municipalities and counties. In addition, §28-3-43 of the Alabama Code does not provide the ABC Board with "delivery authorization".

ABLA President Jim Hurston stated, "ABC's intentional disregard to the Alabama law, put in place by Legislature and signed by Governor Ivey, is extremely alarming. Our several attempts to stop them have been met with a disregard for the law. Since no governing body can stop a state agency from breaking the law, we are forced to enter the judicial system to protect our businesses."

ABLA's lawyer, Joe Espy of Melton, Espy & Williams, P.C., presented a statement and letter to the Board and administrative officials at last week's Board Meeting. In the letter, ABLA notified the Board their plans to develop and implement delivery from Alabama ABC retail stores was violating Alabama law and their Request for Proposal (RFP) was submitted illegally. While the RFP could potentially be fixed by spending more taxpayer dollars to repair its flaws, ABC's plan to deliver alcoholic beverages from state stores is clearly against Alabama law. ABC has refused to change its position, however. A meeting between ABC's in-house legal team and ABLA's attorneys was called to discuss each side's differences. Again, facts were presented stating the law that doesn't allow for delivery from Alabama ABC stores to customers. This statement was not rebutted with any legal or statutory evidence showing otherwise.

Incredulously, the ABC in-house legal team discussed how delivery from ABC stores wouldn't impact Alabama small businesses who also sell and deliver alcoholic beverages. ABLA contends it will absolutely put private package stores out of business due to the imbalance created.

The Alabama alcohol market for selling alcohol is comprised of three primary pillars, Price, Accessibility, and Convenience. ABC controls almost all three pillars, providing a competitive disadvantage in an anti-competitive market. If ABC illegally provides delivery, they will have complete control of those three pillars, forcing Alabama businesses to close.

ABLA Treasurer Bobby Greenawalt stated, "State ABC stores already have a competitive advantage over mom-and-pop independent businesses, in that they can sell products for a lower rate than private stores. ABC already has a markup built into their price which

both consumers and retailers must pay the same price. ABC stores are also not required to pay local sales and liquor tax, putting their prices at an extremely lower price than private stores. They are also able to limit product availability to private stores, giving them an even bigger advantage over independents. Most licensees are only able to compete with ABC Stores on one advantage, Convenience. ABC illegally delivering their own product would eliminate convenience and force small retailers to close.”

Price Pillar – Restaurants, bars, and package stores are required to pay the same price for a bottle of liquor as any other citizen. The licensees are provided a fourteen percent discount if an entire case is purchased, but small businesses don’t always have the cash flow to invest in large amounts of inventory. ABLA has asked for the fourteen percent discount be added to bottle sales and were told that it would be too complicated, that they don’t have time to mess with it, and that private licensees should buy a full case. Unfortunately, licensees don’t have the same buying power and cashflow as the State of Alabama. For example, licensees are forced with deciding to buy a full case of a product, such as Amaretto, which is necessary but not largely consumed in order to receive a fourteen percent discount or buy the one bottle needed and lose any competitive pricing advantage over ABC Stores. This forces the price consumers pay to increase for standard business logic to work. In essence, the lack of a discount to licensees when a full case is not purchased provides further leverage towards ABC’s totalitarian system, keeping competition heavily on their side with price disadvantages.

Convenience Pillar – For years, Alabama private package stores have survived on the Convenience Pillar. ABC stores close between 7PM and 9PM and allowing private package store to cater to later hour shoppers. Location is also a key factor to the Convenience Pillar. Private package stores are strategically placed where its customers can conveniently access their products. Logically, a significant number of customers would not go to a conveniently located private package store when they could order it from the Alabama ABC store to be delivered to their home. There is little doubt ABC’s actions of illegally providing delivery from its stores will harm private package stores. In addition, this would cause a multi-million dollar decrease in the amount of local sales and liquor tax revenue received by local governments

Availability Pillar – Alabama is the only state in the country that has both private package stores and state-owned package stores. Every other state has all of one or the other, presenting a very large challenge to business owners in the state. Because of their totalitarian alcohol system of total control, ABC regulates the distribution of liquor from its warehouse in Montgomery. ABC’s Product Management Division is responsible for selling and distributing its products as well as deciding which stores to send the product. Coincidentally enough, private package stores are required to purchase from a very small selection of the 240+ Alabama ABC stores labeled as wholesale eligible. If ABC doesn’t want a private licensee to have a particular product, they can send it to a non-wholesale eligible store. Since the same division that is responsible for selling alcohol and turning a profit for its own stores is also responsible for selling to private package stores that are competing with ABC, an anti-competitive system was created, allowing for the state to dictate how much is sold, how much is made available, and when those products can be sold to private package stores.

Earlier this year, the White House submitted an Executive Order to the Federal Trade Commission to investigate anti-competitive practices in the United States especially in the alcohol industry. ABLA Treasurer and ABL (American Beverage Licensees) Vice President, Bobby Greenawalt, was asked to speak before the investigative panel from the FTC and reported several findings of anti-competitive nature throughout the industry, including that of the Alabama ABC Board. The FTC’s findings were published a couple of weeks ago and provided clear evidence that a very large anti-competitive market exists in the alcohol industry throughout the United States. Soon, federal action will be taken to resolve those issues. Unfortunately, the FTC and other federal government agencies aren’t permitted to intervene in the anti-competitive practices of the Alabama ABC Board because of the protections provided by the 21st Amendment, allowing states to govern alcohol matters how they see fit.

In reviewing these findings, ABLA’s only option was to present a bill to Alabama Legislature that would fairly regulate the wholesale sale of liquor from Alabama ABC stores to all licensees including bars, restaurants, package stores, night clubs,

etc. The bill, [SB289 introduced today in the Senate](#) by Senator Tom Whatley, will require that all Alabama private licensees have thirty days to purchase products before it can be made available to go to Alabama ABC stores for retail sale, creating a significantly larger amount of local sales and liquor tax. The bill will allow purchases by licensees from any Alabama ABC store at any time the store is open. The bill also allows those licensees better access to allocated items and provides a fair distribution of those items through the representatives of the brands themselves. An advisory board will be compiled of representatives from the ABC Board, liquor distributors, liquor manufacturers, and retailers who would decide what products are considered “allocated” and follow the guidelines set forth in the bill.

Currently, a citizen can walk into an ABC store and buy a bottle of liquor in about three minutes but for a licensee to buy a bottle of liquor, they must order on ABC’s wholesale website and can take up to five days to fulfill the order, sometimes longer. When asking the ABC Board’s Product Management Division on ways to make this easier for the 4,000 Alabama licensees to purchase and pickup liquor, ABLA was told to tell its members to keep more inventory and order earlier because they can’t keep up with the volume of orders coming in from Alabama licensees. To clarify, three minutes to walk in and buy off the shelf, and five days or longer to order wholesale, all while coming from the exact same location from the exact same shelf.

ABC also claims and provides reports that show they sell roughly sixty percent of all the liquor in Alabama through its retail stores, which is true. Why is it true? How could 240+ Alabama ABC stores outsell 4,000 private licensees? Basic rules of economics provide that when the wholesaler is controlled by the same organization that is the retailer, a true monopoly exists forcing the sales trends and volume metrics become dictated through policy and procedure.

This fundamental economic method is the reasoning behind prohibition in the United States, which lead to the development of the federal guideline of the Three Tier System. The Three Tier System was a contributing factor to the repeal of Prohibition and passing of the 21st Amendment. Still followed today, the Three Tier System doesn’t allow any organization to be on more than one of the three tiers, the manufacturer, wholesaler/distributor, and then the retailer. The Alabama ABC Board is on both the distributor and retailer tier, while also completely regulating both.

The ABC Board’s initial response to the bill is that it’s not possible to facilitate because their system isn’t setup to do so and changes can’t be made. However, the Board is prepared to change that same system to illegally deliver alcohol from Alabama ABC stores. Any government agency is going to push against change, especially when it negatively affects their advantages and anti-competitive practices. This bill simply helps put licensees on a more even playing field within the three pillars of competition in an ABC totalitarian system.

Private stores have always been disadvantaged by the Price and Accessibility Pillars. Losing the Convenience Pillar will force private stores owned by Alabama citizens to shutter their doors, while the Alabama ABC Board continues to thrive with record sales and 30% revenue increases year after year in the market they totally control. If the ABC Board does not terminate its efforts to illegally deliver alcohol from its Alabama ABC stores, ABLA will be taking legal action to curb their actions.

ABLA Vice President Roshan Patel stated, “With this proposal from the ABC Board, many of our members will be irreparably harmed, it would not surprise me to see many close their doors forever due to these actions by ABC.”

Alabama business owners are fighting to stay in business in the state controlled anti-competitive market. Stopping delivery and passing a bill to provide fair access to good is the first step to providing a competitive market.

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VIA HAND DELIVERY

Colonel Alan Spencer, Member
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Alabama Alcoholic Beverage Control Board
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Dear Alabama Alcoholic Beverage Control Board:

Please be advised that we represent the Alabama Beverage Licensees Association (ABLA).

In 2021, the Alcohol Delivery Bill, now Alabama Code Section 28-3A-13.1, was drafted to include beer and wine to be delivered from grocery and package stores to citizens of Alabama that were of legal drinking age and not impaired. The Alabama Beverage Licensees Association spoke with the legislative members that wrote the bill and presented an amendment to include alcohol. Prior to the amendment being added, several conversations with ABC were had on safety, limit on amounts that could be delivered, and how delivery would happen. Based upon these discussions, it was understood that the Board and its staff were not interested in delivering alcohol and that the Board would not do so.

The Alcohol Delivery Bill provides that delivery of liquor, beer or wine shall only come from licensees. In Alabama, State ABC stores are not licensees, do not pay liquor tax and local sales tax and do not go before the local government authority to seek approval for liquor licenses. The ABC Board is not a licensee within the meaning of the Act. Code of Alabama §28-3-43 does not provide the ABC Board with "delivery authorization".

We respectfully submit that the Alcohol Delivery Bill does not allow the ABC Board to delivery alcohol and request that the current RFP be withdrawn. We respectfully request that the ABC Board discontinue any efforts to design and/or use a program for alcohol delivery from the ABC Board to the citizens of Alabama.

We plan to be present at the February 24, 2022 ABC Board meeting and would appreciate the opportunity to address the Board under "Other Business".

Respectfully,

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William M. Espy

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