

APA-2

Alabama Alcoholic Beverage Control Board

NOTICE OF INTENDED ACTION

AGENCY NAME:

Alabama Alcoholic Beverage Control Board

RULE NO. & TITLE:

Chapter 20-X-6-.01 Licensed Premises

INTENDED ACTION:

Revise this section of the ABC Administrative Code.

SUBSTANCE OF PROPOSED ACTION:

This revision is being proposed to comply/conform with new legislation. Please see the ABC Board Website www.alabcboard.gov for full text of the proposed changes.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Interested persons may present their views in writing to the Administrative Procedures Secretary, Dana Barlow, Alabama ABC Board, 2715 Gunter Park Drive, West, Montgomery, AL 36109 or email legal@abc.alabama.gov.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

October 5, 2022

CONTACT PERSON AT AGENCY:

Lilla Ganger, ABC Attorney
2715 Gunter Park Drive, West
Montgomery, AL 36109



(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

20-X-6-.01 Licensed Premises.

(1) Any ABC Board licensee and/or any person applying initially for an ABC Board license, by virtue of holding such license or making such application does agree, invite, consent, and authorize personnel of the ABC Board, as well as commissioned law enforcement officers having proper jurisdiction, at any time, to enter and search the premises, observe the operation, and otherwise enforce state laws, and rules and regulations of the ABC Board in or about the premises, without a warrant, including not only the licensed premises but any building owned or occupied by the licensee in connection therewith, adjoining, or adjacent thereto, whether or not connected or used by the licensee as a private dwelling.

(2) Any ABC Board licensee and/or any person applying initially for an ABC Board license, by virtue of holding such a license or making such application, does agree, invite, consent and authorize personnel of the ABC Board to examine and inspect equipment, stocks, invoices, receipts, books, papers and related records and to make copies of the same at any time during normal operating hours of the ABC Board or of the licensee.

(3) The premises of any club licensee shall not be deemed to be the home or private premises of any member thereof. However, by applying initially or seeking renewal of such license, all officers and members of the club do agree, consent, authorize, and accept this definition of the club premises and the invitation to search, supervise, observe, and enforce the laws and regulations of the ABC Board as set forth in Section (1) above.

(4) Where private living quarters are maintained in the same structure in which an ABC Board licensed business is operated, such living quarters shall be considered part of the licensed premises and shall be subject to warrantless full inspection and supervision by the ABC Board as in any other part of the licensed premises.

(5) Individual hotel and motel rooms occupied by registered guests shall be considered private and not a part of the licensed premises nor subject to the provisions of this regulation.

(6) ABC Board licensees shall be accountable to the ABC Board for criminal conduct which occurs or is suffered to occur on any part of the licensed premises. Where the ABC Board or Hearing

Commission finds such criminal conduct to be allowed, caused, permitted, or suffered to occur by the licensee, employees or agents thereof, the licensee's license shall be subject to disciplinary action.

(7) Any ABC Board licensee found on or off the licensed premises, possessing, transporting, selling, receiving, giving, or otherwise dealing with alcoholic beverages without having paid the appropriate Alabama tax thereon, shall be subject to disciplinary action.

(8) Any ABC Board licensee, officer, or agent thereof violating any criminal law or statute of the State of Alabama, whether or not occurring on the licensed premises, may subject the licensee to disciplinary action.

(9) ~~The premises of all ABC Board retail licensees licensed to sell beer or wine for off-premises consumption shall not~~ may contain facilities for the sale of alcoholic beverages ~~beer or wine or both, but may not sell liquor, by means of a "drive-up", "walk-up", or "drive-thru" window or other type of exterior access. All rules governing the sale of alcohol and tobacco still apply and it is the responsibility of the licensee to ensure that there are no sales of alcohol or tobacco to minors, there are no sales of alcohol to intoxicated individuals, and that all sales of beer and/or wine are made in sealed containers in accordance with Title 28 and ABC Rules and Regulations. Provided, however, off-premises beer and/or off-premises table wine licensees may sell beer and/or table wine through a "walk-up" window if all other goods of the licensee are at these times sold through the window and the premises are otherwise closed to the public. All sales of alcoholic beverages must be made on the inside of the licensed premises except as provided herein and as provided in ABC Board Regulations 20-X-6-.07 and 20-X-6-.01(15).~~ Those licensees conducting beer and wine sales by the above-mentioned means of exterior access shall:

(a) Have a minimum of two employees working at any time the exterior access is being used, and shall designate at least one individual whose sole responsibility is the operation of the drive thru window/exterior access.

(b) Post, in a well-lighted area near the exterior access, a sign which must be visible to customers purchasing beer and/or wine. The sign must be a minimum of 18" X 24" and read:

1. Containers must remain sealed at all times during vehicular transportation from the place of purchase to the destination.

2. It is unlawful for a person in a motor vehicle to have in his or her possession alcoholic beverages of any kind, in an open container, on a public highway or right-of-way of a public highway of this state (see 32-5A-330, Code of Alabama).

(c) Install a video security camera or cameras, which also record audio, to ensure each sales transaction is recorded. The transaction recording shall, at a minimum, include the customer's face and vehicle, including the license plate. All transaction recordings shall be retained by the licensee for a minimum of thirty (30) days and shall be subject to inspection by ABC Board employees or law enforcement without a warrant.

(d) Have sufficient lighting in the drive thru area to allow identification of the occupants of the vehicle. If the vehicle has tinted windows, the windows must be lowered prior to the sale.

(e) Require valid proof of age in accordance with 20-X-6-.09(d) to verify the individual purchasing beer and/or wine is at least 21 years old. If there are multiple occupants in the vehicle, with the exception of a juvenile child with a parent or guardian, and it appears, under the totality of the circumstances, that the driver may be purchasing alcohol for another person in the vehicle, the licensee, employee or agent of the licensee must require valid proof of age from each occupant.

(f) Refuse to sell, furnish or give beer and/or wine to any person if such person appears, under the totality of the circumstances, to be intoxicated. If the intoxicated individual is the driver of the vehicle, the licensee, employee or agent of the licensee should make every attempt to, at the time of the refusal, report the driver to the nearest law enforcement agency.

(10) All ABC Board licensees shall display their current ABC licenses in public view on the licensed premises.

(11) ABC Board licensees shall not rent, furnish, or maintain beverage locker service or storage service for the keeping of alcoholic beverages by customers, patrons, or consumers.

(12) No ABC Board licensee shall allow on the licensed premises the consumption and/or possession of any type of alcoholic beverage which the licensee is not authorized to sell. Further, the practice of brown bagging, or customers bringing their own alcoholic beverages is prohibited on ABC Board licensed premises. This brown bagging provision shall not apply to alcoholic beverages, for which the appropriate Alabama tax has been paid, which are brought on the premises of Class I Club (not operated for pecuniary gain) licensees.

(13) Any ABC Board licensee which requires its members or patrons to possess keys, card keys, code numbers, membership cards or other such mechanisms as a condition to gaining access to its licensed premises, shall provide and supply to the ABC Board upon initial issuance of the license and/or renewal, access to and evidence of such mechanisms so as to allow entry by ABC Board personnel upon the licensed premises at any time during normal business hours for the purpose of observing the normal operation thereof. Any changes or modifications to the premise entry mechanisms during the license year shall be brought to the attention of the ABC Board immediately. Failure to provide this information shall, at the ABC Board's discretion, be grounds for disciplinary action against the licensee.

(14) All sales and service of alcoholic beverages by any ABC Board retail licensee shall be made within the interior of buildings situated upon the licensed premises, except as provided in the Code of Ala. 1975, and ABC Board Regulations 20-X-6-.07, 20-X-6-.01(15), 28-3A-6.1, 28-3A-6.2, and ACT 2021-188.

(15) It shall be permissible for an ABC Board licensee who is licensed to sell alcoholic beverages for on-premises consumption, off-premises consumption, or both, to sell alcoholic beverages for off-premises consumption only, using curbside pick-up or takeout. Curbside pick-up or takeout is considered an order, placed with the licensee, that is brought to the customer's vehicle in the parking lot of the licensed premises, or picked up at the licensee's place of business. All licensees primarily operating as "package stores" may only sell items allowable under 20-X-5-.13. ~~retail beer and/or wine licensee to operate an online grocery pickup program, for all products sold by the retail licensee, to allow a customer to place an order that includes beer and/or wine products, and to allow beer and/or wine products to be brought to, and loaded into, the customer's vehicle. Purchased goods, including beer and/or wine alcoholic beverages, must be placed in the customer's vehicle within a clearly designated, well lighted pickup/takeout area. Purchasers of beer and/or wine pursuant to an online grocery pickup program must be registered with the retail licensee. Upon delivery of beer and/or wine alcoholic beverages to a customer's vehicle, an employee of the retail beer and/or wine licensee must verify that the recipient is 21 years of age or older by reviewing an allowable form of identification listed in 20-X-6-.09(d). If identification cannot be verified, or if the driver appears intoxicated, all beer and wine alcoholic beverages must be removed from the order and the~~

customer will not be charged for any removed products. Any employee handling alcoholic beverages in the designated pickup area ~~through an online grocery pickup program~~ must be 21 years of age or older. The ABC Board shall have the right to deny any ABC Board ~~beer and/or wine~~ licensee permission to sell alcoholic beverages for curbside pickup or takeout services ~~operate an online grocery pickup program~~ if it determines that the licensee does not have proper processes and safeguards in place to ensure compliance with this provision. In addition to the requirements listed in ACT 2022-431, Section 2, a licensee shall have a camera installed to record all transactions. Recordings must be maintained for a minimum of thirty (30) days and shall be available, upon request, for inspection by ABC Board employees or law enforcement without a warrant.

Author: ABC Board

Statutory Authority: Code of Ala. 1975, §§28-3-2; 28-3-19; 28-3-49; 28-3A-23; 28-3A-25; 28-3A-6.1; 28-3A-6.2.

History: Repealed and New: Filed August 21, 1998; effective October 16, 1998. **Amended:** Filed March 17, 2004; effective April 21, 2004. **Amended:** Filed August 17, 2018; effective October 1, 2018. **Amended:** Published August 31, 2021; effective October 15, 2021.