

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Senator Dowd**

A Bill

ACT 537 OF 1995
SENATE BILL 497

For An Act To Be Entitled

8 "AN ACT TO BE KNOWN AS THE NONRESIDENT BEER SELLER_S
9 PERMIT ACT OF 1995_ RELATING TO ALCOHOLIC BEVERAGES; TO
10 AUTHORIZE THE ISSUANCE OF PERMITS TO NONRESIDENT
11 MANUFACTURERS, SUPPLIERS, BREWERS AND IMPORTERS OF BEER BY
12 THE ALCOHOLIC BEVERAGE DIVISION; TO ESTABLISH A PROCEDURE
13 FOR THE ISSUANCE OF SUCH PERMITS; TO PROHIBIT THE
14 IMPORTATION OR SALE OF ANY BEER OR MALT LIQUOR FROM ANY
15 SOURCE NOT POSSESSED OF A PERMIT; TO AMEND ARKANSAS CODE
16 3-2-205(b) TO CONFORM WITH THIS ACT; AND FOR OTHER
17 PURPOSES."

Subtitle

19
20 " NONRESIDENT BEER SELLER_S PERMIT ACT
21 OF 1995_."

22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24
25 SECTION 1. Short Title.

26 This act shall be known as the "Nonresident Beer Seller_s Permit Act of
27 1995."

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29 SECTION 2. Definitions.

30 (a) "Beer" shall have the meaning set forth in §3-5-202(3).

31 (b) "Brewer" shall have the meaning set forth in §3-5-202(5).

32 (c) "Division" shall mean the Alcoholic Beverage Control Division of
33 the State of Arkansas.

34 (d) "Malt Liquor" shall have the meaning set forth in §3-1-
35 102(a)(3)(A).

36 (e) "Manufacturer" shall have the meaning set forth in §3-1-102(a)(4).

1 (f) "Supplier" shall have the meaning set forth in §3-5-1102(a)(10).

2 (g) "Wholesaler" shall have the meaning set forth in §3-5-202(10).

3

4 SECTION 3. When permit required.

5 A nonresident seller_s permit is required of any manufacturer, brewer,
6 supplier, or other such person, which sells or distributes beer or malt
7 liquor, to any wholesale dealer and distributor, regardless of whether the
8 sale is consummated inside or outside this state.

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10 SECTION 4. Authorized transactions.

11 The holder of a nonresident seller_s permit is authorized to:

12 (1) Solicit and take orders for beer or malt liquor from a wholesaler
13 dealer and distributor; and

14 (2) Ship or cause to be shipped into this state beer or malt liquor in
15 consummation of a sale made to a wholesaler dealer or distributor.

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17 SECTION 5. Prohibited actions.

18 No holder of a nonresident seller_s permit, nor any officer, director,
19 agent, or employee of the holder, nor any affiliate of the holder, regardless
20 of whether the affiliation is corporate or by management, direction, or
21 control, may do any of the following:

22 (1) Fail to make or file a report with the division as required by
23 rules of the division;

24 (2) Advertise any beer or malt liquor contrary to the laws of this
25 state or to the rules of the division, or sell beer or malt liquor for resale
26 in this state in violation of advertising or labeling rules of the division;

27 (3) Sell beer or malt liquor for resale inside this state or cause it
28 to be brought into this state in a size of container prohibited by this act or
29 by rule of the division;

30 (4) Solicit or take orders for beer or malt liquor from a person not
31 authorized to import beer or malt liquor into this state for the purpose of
32 resale;

33 (5) Induce, persuade, or influence, or attempt to induce, persuade or
34 influence, a person to violate this act or a rule of the division, or conspire
35 with a person to violate this act or rule of the division;

1 (6) Exercise a privilege granted by a nonresident seller_s permit while
2 an order or suspension against the permit is in effect;

3 (7) Take or fail to take any action that would cause any type of fixing
4 of wholesale or retail prices in the state. Suggestion of wholesale or retail
5 prices will not be considered to be a violation of this provision;

6 (8) Any other act by a supplier in violation of Arkansas Code 3-5-1107;

7 (9) Hold any wholesaler_s permit under Arkansas Code 3-5-202(10); or

8 (10) Any other act that violates any regulation adopted by the division.

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10 SECTION 6. Application for permit.

11 (a) Any manufacturer, importer or other person desiring to obtain a
12 nonresident seller_s permit may make application for such to the division on
13 forms provided by the division.

14 (b) In addition, every applicant shall pay to the division an annual
15 permit fee which is established at one hundred dollars (\$100.00) if such
16 applicant shall have shipped, sold or otherwise distributed fewer than two
17 hundred (200) barrels, as defined for excise tax purposes under the Arkansas
18 Code, of any beer or malt liquor in this state in the year immediately
19 preceding application. If such applicant shall have shipped, sold or
20 otherwise distributed in this state from two hundred (200) to one thousand
21 (1,000) barrels in the year immediately preceding application, such applicant
22 shall pay an annual permit fee of five hundred dollars (\$500). If such
23 applicant shall have shipped, sold or otherwise distributed in this state more
24 than one thousand barrels (1,000) in the year immediately preceding
25 application, such applicant shall pay an annual permit fee of one thousand
26 dollars (\$1,000).

27 (c) Each permit shall be valid for one (1) fiscal year which shall run
28 from the first day of July to the last day of June. Any applicant receiving a
29 permit during the course of any fiscal year shall not be relieved of the
30 obligation to pay the full amount of the annual permit fee. As long as a
31 permit has not been revoked, it shall be renewable for successive years upon
32 the payment of the appropriate annual permit fee. Each holder of a permit
33 shall pay the permit fee based on the immediate previous calendar year_s
34 shipments into the state.

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1 SECTION 7. Wholesalers to import from nonresident seller permittees
2 only.

3 No wholesaler licensed under Arkansas Code 3-5-206 may purchase or order
4 any malt beverage for importation into the state from any source other than
5 one possessed of a nonresident seller_s permit. No such wholesaler may
6 purchase or order any beer or malt liquor for importation into this state from
7 any permittee whose permit has been revoked or suspended after such wholesaler
8 has received notice of the revocation or suspension.

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10 SECTION 8. Nonresident seller to be primary American source of supply.

11 (a) No holder of a nonresident seller_s permit may solicit, accept, or
12 fill an order for beer or malt liquor, from a holder of any type of
13 wholesaler_s permit unless the nonresident seller is the primary American
14 source of supply for the brand of beer or malt liquor which is ordered.

15 (b) In this section, "primary American source of supply" shall mean the
16 producer, the owner of the commodity at the time it becomes a marketable
17 product, the bottler or the exclusive agent of any of those. To be the
18 "primary American source of supply" the nonresident seller must be the first
19 source, that is the closest source to the manufacturer, in the channel of
20 commerce from whom the product can be secured by persons conducting business
21 in Arkansas.

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23 SECTION 9. Investigation of permittees.

24 (a) If a representative of the division or the Department of Revenue
25 wishes to examine the book accounts, records, minutes, letters, memoranda,
26 documents, checks, telegrams, constitution and bylaws, or other records of a
27 nonresident seller_s permittee, he shall make a written request to the
28 permittee or his duly authorized manager or representative or, if the
29 permittee is a corporation, to any officer of the corporation.

30 (b) When a request for an examination is made, the person to whom it is
31 directed shall immediately allow the representative to conduct the
32 examination.

33 (c) The representative may investigate the organization, conduct and
34 management of any nonresident seller_s permittee and may make copies of any
35 records which in the judgment of the representative may show or tend to show

1 that the permittee has violated the law, regulation or the terms of his
2 permit.

3 (d) A representative may not make public any information obtained under
4 this section except to a law enforcement officer of this state or in
5 connection with an administrative or judicial proceeding in which the state or
6 division is a party concerning the cancellation or suspension of a nonresident
7 seller_s permit, the collection of taxes due under state law, or the violation
8 of state law.

9 (e) The division may revoke or suspend a nonresident seller_s permit in
10 accordance with this title if the permittee or his authorized representative
11 fails or refuses to permit an examination authorized by this section, or to
12 permit the making of copies of any documents as provided by this section,
13 without regard to whether the document is inside or outside the state, or if
14 the permittee or his authorized representative fails or refuses to answer a
15 question of an officer incident to an examination or investigation in
16 progress.

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18 SECTION 10. Administrative sanctions.

19 (a) The director and the board are empowered to administer the full
20 range of penalties available for other administrative proceedings before it,
21 including but not limited to, fines, suspension, cancellation, or revocation
22 of such permits which have been found to be in violation of the provisions of
23 this act.

24 (b) Any violation of this act shall be classified as a Class A
25 violation pursuant to the terms of Arkansas Code 3-4-402.

26

27 SECTION 11. Arkansas Code 3-2-205(b) is amended to read as follows:

28 "(b) The Alcoholic Beverage Control Division shall have the following
29 powers, functions, and duties:

30 (1) To fix by rule the standards of manufacturing, rectifying, and
31 blending in order to insure the use of proper ingredients and methods in the
32 manufacturing, rectifying, and blending of vinous, spirituous, or malt liquors
33 to be sold in the state;

34 (2) To adopt rules and regulations for the supervision and control of
35 the manufacture and sale of vinous (except wines), spirituous, or malt liquors

1 throughout the state not inconsistent with law;

2 (3) To prescribe forms of applications for permits under this act and
3 of all periodic reports deemed necessary to be made by any permittee;

4 (4) To fix the hours during which vinous, spirituous, or malt liquors
5 may be sold or dispensed at retail, as provided by this act;

6 (5) To keep records in proper form to be prescribed by the Director of
7 the Alcoholic Beverage Control Division and the Director of the Department of
8 Finance and Administration of all permits issued and all permits revoked under
9 the provisions of this act and to keep records in such form so as to provide
10 ready information as to the identity of all permits including the names of
11 stockholders and directors of corporations holding permits, and also the
12 location of all permitted premises.

13 (6) To adopt rules and regulations for the supervision and control of
14 nonresident beer seller_s permit."

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16 SECTION 12. All provisions of this act of a general and permanent
17 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
18 Code Revision Commission shall incorporate the same in the Code.

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20 SECTION 13. If any provision of this act or the application thereof to
21 any person or circumstance is held invalid, such invalidity shall not affect
22 other provisions or applications of the act which can be given effect without
23 the invalid provision or application, and to this end the provisions of this
24 act are declared to be severable.

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26 SECTION 14. All laws and parts of laws in conflict with this act are
27 hereby repealed.

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29 SECTION 15. Effective date. This act shall be effective July 1, 1995.

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31 SECTION 16. EMERGENCY. It is hereby found and determined by the
32 General Assembly that present law does not adequately protect the people of
33 the State of Arkansas from unscrupulous activities of nonresident
34 manufacturers, suppliers, brewers and importers of beer; that the present law
35 does not contain procedures for registration of nonresident manufacturers,

1 suppliers, brewers and importers of beer, nor enforcement of current laws
2 against such groups; and that the present law does not empower the Alcoholic
3 Beverage Division to effectively monitor the activities of manufacturers,
4 suppliers, brewers and importers of beer. Therefore, an emergency is hereby
5 declared to exist and this act being necessary for the preservation of the
6 public peace, health and safety shall be in full force and effect from and
7 after July 1, 1995.

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APPROVED: 3-7-95

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