

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H2/27/03 H3/5/03 H3/13/03

A Bill

HOUSE BILL 1728

5 By: Representatives Pickett, Bradford, Mahony, *P. Bookout, Thyer*
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7

For An Act To Be Entitled

9 AN ACT TO ALLOW CERTAIN COUNTIES AND CITIES OF
10 THE FIRST CLASS TO CONDUCT LOCAL OPTION ELECTIONS
11 TO DECIDE THE ISSUE OF ALLOWING THE SALE OF
12 ALCOHOLIC BEVERAGES IN HOTELS, RESTAURANTS, AND
13 LARGE ATTENDANCE FACILITIES; AND FOR OTHER
14 PURPOSES.

Subtitle

15
16 AN ACT TO ALLOW CERTAIN COUNTIES AND
17 CITIES OF THE FIRST CLASS TO CONDUCT
18 LOCAL OPTION ELECTIONS TO DECIDE THE
19 ISSUE OF ALLOWING THE SALE OF ALCOHOLIC
20 BEVERAGES IN HOTELS, RESTAURANTS, AND
21 LARGE ATTENDANCE FACILITIES.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code Title 3, Chapter 8, is amended to add an
28 additional subchapter to read as follows:

29 3-8-501. Legislative Determination and Intent.

30 The General Assembly finds that:

31 (1) Local option laws of Arkansas no longer meet the needs and
32 desires of certain communities which have chosen not to authorize every type
33 of alcoholic beverage sale permitted by law, in that if the sale of
34 intoxicating liquors is approved by voters under existing law, that approval
35 would necessarily include the approval of most forms of the manufacture and
36 sale of intoxicating liquors, including a multitude of on-premises and off-



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1 premises sales as permitted by the Alcoholic Beverage Control Division; and

2 (2) There is currently no provision in Arkansas law allowing
3 certain counties and cities of the first class, in which the manufacture or
4 sale of alcoholic beverages has been prohibited, to decide by local
5 referendum whether the sale of alcoholic beverages in hotels, restaurants,
6 and large attendance facilities should be authorized.

7
8 3-8-502. Definitions.

9 For purposes of this subchapter:

10 (1) "Alcoholic beverages" means all intoxicating beverages including
11 spirits, wines, beer, and all other intoxicating beverages approved for sale
12 in this state which contain more than one-half of one percent ($\frac{1}{2}$ of 1%)
13 alcohol by weight;

14 (2) "Final determination" means the date of certification of the
15 results of an uncontested election or, if contested, the date of the issuance
16 of the mandate by the court finally determining an election contest;

17 (3) "Hotel" has the same meaning as defined in § 3-9-202;

18 (4) "Restaurant" means any public or private place, without sleeping
19 accommodations and that place:

20 (A) Is kept, used, maintained, advertised, and held out to
21 the public or to a private or restricted membership as a place whose primary
22 function and purpose is to take orders for and to serve food and food items;

23 (B) Actually serves full and complete meals prepared in a
24 fully equipped and sanitary kitchen and prepared from uncooked foods for
25 service to and for consumption by its guests or members on the premises;

26 (C) Has a seating capacity of at least fifty (50) people;

27 (D) Has employed a sufficient number and kind of employees
28 to prepare, cook, and serve suitable foods to its guests or members;

29 (E) Serves alcoholic beverages on-premises only, in
30 conjunction with meals;

31 (F) Serves food on all days of operations;

32 (G) Maintains separate sales figures for alcoholic
33 beverages;

34 (H) Has gross sales of sixty percent (60%) or more from
35 the sale of food, food items, and nonalcoholic beverages; and

36 (5) "Large attendance facility" has the same meaning as "large

1 meeting or attendance facility” as defined in § 3-9-202(8)(B)(i).

2
3 3-8-503. Applicability.

4 (a) This subchapter is supplemental to existing on-premises
5 consumption laws.

6 (b) This subchapter only applies to:

7 (1) Counties having a population between seventy thousand
8 (70,000) and eighty-seven thousand (87,000) based on the most recent Federal
9 decennial census that have not approved the sale of intoxicating liquors as
10 of the date of this subchapter, that have cities of first class located in
11 those counties, with a population exceeding forty-three (43,000) based on the
12 most recent decennial census; and

13 (2) Cities of first class with a population exceeding forty-
14 three (43,000) based on the most recent Federal decennial census that have
15 not approved the sale of intoxicating liquors as of the effective date of
16 this subchapter.

17 (c) This subchapter, or any election conducted under its provisions,
18 does not divest any permit holder of any permit issued under any law which
19 was in effect on the effective date of this subchapter.

20
21 3-8-504. Referendum Procedures.

22 (a) A referendum election may be called in an authorized city of the
23 first class by resolution adopted by a majority vote of the governing body of
24 the city at any regular or special meeting or by petition procedure, as
25 provided in this subchapter.

26 (b) A referendum election may be called in an authorized county by a
27 resolution adopted by a majority vote of the quorum court at any regular or
28 special meeting or by petition procedure, as provided in this subchapter.

29 (c)(1) Petitions for local option elections held under this subchapter
30 shall be prepared according to § 3-8-204.

31 (2) Petitions for local option elections shall list the city of
32 the first class or county in which hotels, restaurants, and large attendance
33 facilities will be authorized to apply for permits.

34 (d) If a majority of electors vote for the sale of the alcoholic
35 beverages for on-premises consumption in hotels, restaurants, and large
36 attendance facilities, permits would be authorized to be issued within that

1 city of the first class or county.

2
3 3-8-505. Determination of sufficiency of petition - Calling of
4 election.

5 (a)(1) If at least thirty-eight percent (38%) of the qualified
6 electors in the authorized county or city of the first class file a petition
7 with the county clerk praying that an election be held in the county or city
8 of the first class, to determine whether or not licenses shall be granted to
9 permit the sale of alcoholic beverages in hotels, restaurants, and large
10 attendance facilities, the county clerk shall determine within ten (10)
11 business days the sufficiency of the petition.

12 (2) The total number of voters registered in the county or city
13 of the first class as certified by the county clerk to the Secretary of State
14 by the first of June of each year pursuant to Amendment 51 of the Arkansas
15 Constitution, shall be the basis upon which the number of signatures of
16 qualified electors on petitions shall be computed.

17 (3) A person shall be a registered voter at the time of signing
18 the petition.

19 (b) If thirty-eight percent (38%) of the qualified electors of a county
20 or city of the first class have signed the petition, or if the governing body
21 of a county or city of the first class shall, by majority vote, call for an
22 election pursuant to this subchapter, the county clerk shall certify that
23 finding to the county board of election commissioners, and the question shall
24 be placed on the ballot in the applicable county or city of the first class
25 at a general or special election.

26 (c)(1) If an appeal is taken from the certification of the county
27 clerk, it shall be taken within ten (10) business days and shall be
28 considered by the circuit court within ten (10) business days, or as soon as
29 practicable, after the appeal is lodged with the court.

30 (2) The circuit court shall render its decision within thirty
31 (30) calendar days.

32 (d) If an appeal is taken, the election shall be conducted within one
33 hundred twenty (120) calendar days after the appeal is determined by the
34 circuit court, if the decision is in favor of the election petitioners.

35 (e)(1)(A) The decision shall be certified immediately to the county
36 board of election commissioners, and the day for the election shall be fixed

1 by the county board of election commissioners for not earlier than twenty
2 (20) calendar days or later than one hundred twenty (120) calendar days after
3 the certification of the decision of the circuit court.

4 (B) Any appeal from the final decision of the circuit
5 court shall be taken within ten (10) business days and shall be advanced and
6 immediately determined by the Supreme Court.

7 (2) If an appeal is taken from the circuit court, the county
8 board of election commissioners may delay the election until after the final
9 decision of the Supreme Court.

10 (3)(A) If the decision is in favor of the election petitioners,
11 then the county board of election commissioners shall set the day for the
12 election.

13 (B) The date shall not be fewer than twenty (20) calendar
14 days nor more than one hundred twenty (120) calendar days after the final
15 decision of the Supreme Court.

16
17 3-8-506. Conduct of Election.

18 (a)(1) Upon the certification by the county clerk for an election
19 under this subchapter, in a city of the first class or county, the county
20 board of election commissioners of the county shall cause the question to be
21 placed on the ballot at a general or special election, which shall be fixed
22 by the county board of election commissioners not less than thirty (30)
23 calendar days and no more than one hundred twenty (120) calendar days from
24 date of certification by the county clerk, and shall give notice of the
25 special election by publication in the newspaper of general circulation in
26 the city of first class or county by at least two insertions, the last being
27 not less than ten (10) business days prior to the election.

28 (2) The form of the ballot, consistent with the petition having
29 been circulated, shall be printed as follows:

30
31 FOR THE SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION IN HOTELS,
32 RESTAURANTS, AND LARGE ATTENDANCE FACILITIES IN (NAME OF CITY OF THE FIRST
33 CLASS OR COUNTY), ARKANSAS, AS AUTHORIZED IN § 3-8-504.

34 AGAINST THE SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION IN
35 HOTELS, RESTAURANTS, AND LARGE ATTENDANCE FACILITIES IN (NAME OF CITY OF THE
36 FIRST CLASS OR COUNTY), ARKANSAS, AS AUTHORIZED IN § 3-8-504.

1 (b)(1) If voters approve the sale of alcoholic beverages for on-
2 premises consumption at hotels, restaurants, and large attendance facilities,
3 the Alcoholic Beverage Control Division may issue hotel, restaurant, and
4 large attendance facility mixed drink permits to qualified applicants located
5 within the city of the first class or the county.

6 (2) If voters approve the sale of alcoholic beverages for
7 on-premises consumption at hotels, restaurants, and large attendance
8 facilities, the city of the first class or county may hold a subsequent
9 election under §§ 3-8-201 through 3-8-210.

10 (3) If voters approve the sale of alcoholic beverages for
11 on-premises consumption in hotels, restaurants and large attendance
12 facilities, the city of the first class or county may hold a subsequent
13 election under § 3-9-215 on the issue of whether to allow the sale of
14 alcoholic beverages on Sundays, as authorized by law.

15 (c) The county board of election commissioners shall count the votes
16 cast on the question of the sale of alcoholic beverages in the designated
17 area, and shall deliver its certificate declaring the result of the election,
18 together with the election returns, within three (3) business days after the
19 date of the election, to the county clerk of the county.

20 (d) Upon petition of twenty-five (25) interested, registered voters in
21 the territory affected, within ten (10) business days after the date of the
22 election, the county board of election commissioners shall immediately
23 recount the votes and declare the results of the election as determined by
24 the recount.

25 (e) Within twenty (20) calendar days after the election, the county
26 court shall make and have entered of record its order declaring the result of
27 the election.

28 (f)(1) The costs of any special election held under this subchapter
29 shall be paid by the proponents of the election.

30 (2) In the case of a referendum election called by a resolution
31 adopted by the governing body of the city or quorum court, the proponents
32 responsible for paying the costs of the special election shall be named in
33 the resolution.

34 (3) The costs of any general election held under this subchapter
35 shall be paid by the county in the same manner as other costs of general
36 elections.

1 (g)(1)(A) After an election is held, a period of at least four (4)
2 years shall elapse before another election on the same subject may be held in
3 the territory affected.

4 (B) An adverse vote in a countywide election shall not
5 prohibit the calling of an election in a city in that county, nor shall an
6 adverse vote in a city election prohibit the calling of an election in the
7 county.

8 (2)(A) If a city of the first class or county approves the sale
9 of alcoholic beverages for on-premises consumption at hotels, restaurants,
10 and large attendance facilities, opponents of the measure may petition to
11 place the issue back on the ballot at a subsequent election by using the same
12 procedures, and subject to the same requirements of this subchapter.

13 (B)(i) If the majority of the voters at a subsequent
14 election vote against the sale of alcoholic beverages for on-premises
15 consumption in hotels, restaurants and large attendance facilities, the
16 holders of permits shall be allowed a period of one hundred twenty (120)
17 calendar days in which to dispose of stock after the final determination of
18 the results of the local option election by which the political subdivision,
19 in which the holder of the permit is located, shall have voted against the
20 sale of alcoholic beverages for on-premises consumption in hotels,
21 restaurants, and large attendance facilities.

22 (ii) During the one hundred twenty (120) calendar
23 day period, the holder of a permit may not purchase any alcoholic beverages,
24 but must restrict its business to the sale of those items on hand as of the
25 date the election results are finally determined.

26
27 5-8-507. Mandamus of County Officials.

28 Upon petition of ten (10) interested registered voters in the territory
29 affected, filed with the circuit clerk of the county in which proceedings are
30 pending, the circuit court shall immediately by mandamus, compel the county
31 court or other officials to perform the duties imposed upon them by this
32 subchapter.

33
34 5-8-508. Purchase of Alcoholic Beverages.

35 Persons holding a permit to sell alcoholic beverages under this
36 subchapter shall purchase such beverages from a retail liquor store

1 authorized by the Alcoholic Beverage Control Board to sell to the permittee.

2
3 5-8-509. Temporary permit for operation of restaurant.

4 (a) A restaurant may be issued a temporary permit to sell alcoholic
5 beverages for on-premises consumption for a period not to exceed ninety (90)
6 days.

7 (b) The temporary ninety-day time period is to be used to allow the
8 restaurant to make a determination of its gross sales.

9 (c) The fee for the temporary permit shall be twenty-five dollars
10 (\$25.00).

11
12 5-8-510. Regulatory authority.

13 The Alcoholic Beverage Control Board may adopt regulations to implement
14 the intent and purposes of this subchapter.

15
16 /s/ Pickett, et al
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