

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 *As Engrossed: H3/24/03 H4/2/03 S4/9/03*

2 84th General Assembly

# A Bill

3 Regular Session, 2003

HOUSE BILL 2290

4

5 By: Representatives Ledbetter, Hathorn, Bond, Stovall, Rosenbaum

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## For An Act To Be Entitled

9 AN ACT TO BE KNOWN AS THE ARKANSAS NATIVE BREWERY  
10 ACT; TO CREATE A NEW CATEGORY OF BEER LICENSES;  
11 TO PROVIDE FOR THE OPERATION OF THE LICENSED  
12 FACILITIES; AND FOR OTHER PURPOSES.

13

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## Subtitle

15 AN ACT TO BE KNOWN AS THE ARKANSAS  
16 NATIVE BREWERY ACT; TO CREATE A NEW  
17 CATEGORY OF BEER LICENSES; AND TO  
18 PROVIDE FOR THE OPERATION OF THE  
19 LICENSED FACILITIES.

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

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24 *SECTION 1. Title.*

25 *This act shall be known, and may be cited as the "Arkansas Native*  
26 *Brewery Act*.

27

28 *SECTION 2. Legislative determinations and intent.*

29 *(a) The General Assembly finds that:*

30 *(1) The creation and long-term success of small businesses in*  
31 *this state is vital to the continued economic well-being and prosperity of*  
32 *the State of Arkansas; and*

33 *(2) All reasonable steps should be taken to retain, foster, and*  
34 *encourage small business and to create favorable conditions for small*  
35 *business in this state.*

36 *(b) It is the intent and purpose of this act to authorize the legal*



1 operation of native breweries in order to assure that these favorable  
2 conditions exist in this state.

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4 SECTION 3. Definitions.

5 As used in this act:

6 (1) "Barrel" means thirty-one (31) gallons;

7 (2) "Beer" means any fermented liquor made from malt or any  
8 substitute having an alcoholic content of not more than five percent (5%) by  
9 weight;

10 (3) "Board" means the Alcoholic Beverage Control Board;

11 (4) "Brewery" means the facilities of a native brewer that  
12 operate a small brewery, contract brewing company, microbrewery, or  
13 restaurant;

14 (5) "Contract brewing company" means any licensed brewery that  
15 hires another company to produce a portion of its beer or malt beverage;

16 (6) "Director" means the Director of the Alcoholic Beverage  
17 Control Division;

18 (7) "Malt beverage" means any liquor brewed from the fermented  
19 juices of grain and having an alcoholic content of no less than five percent  
20 (5%) nor more than twenty-one percent (21%) by weight;

21 (8) "Native brewer" means any person who is licensed by the  
22 Alcoholic Beverage Control Division to manufacture and sell beer and malt  
23 beverages at a small brewery or microbrewery-restaurant;

24 (9) "Native brewery" means a small brewery or microbrewery-  
25 restaurant;

26 (10) "Microbrewery-restaurant" means any restaurant that  
27 manufactures one (1) or more varieties of beer or malt beverage in an  
28 aggregate quantity of not more than five thousand (5,000) barrels per year,  
29 and stores the beer or malt beverages on the premises or on any adjacent  
30 premises;

31 (11) "Small brewery" means any licensed facility that  
32 manufactures less than 60,000 barrels of beer and malt beverages per year for  
33 sale or consumption;

34 (12) "Person" means any natural person, partnership,  
35 association, or corporation;

36 (13) "Producer brewery" is any licensed brewery, domestic or

1 foreign, that manufactures or packages beer or malt beverages for a small  
2 brewery, contract brewing company, microbrewery, or restaurant; and

3 (14) "Restaurant" means any public or private facility that:

4 (A) Is kept, used, maintained, advertised, and held out to  
5 the public or to a private or restricted membership as a place where complete  
6 meals are regularly served, the place being provided with adequate and  
7 sanitary kitchen and dining equipment and a seating capacity of at least  
8 fifty (50) people, and having employed a sufficient number of employees to  
9 prepare, cook, and serve food suitable for its guests or members; and

10 (B) Serves at least one (1) meal per day and the place is  
11 open a minimum of five (5) days per week, with the exception of holidays,  
12 vacations, and periods of redecorating.

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14 SECTION 4. Effect on other laws.

15 Every provision of this act is subject to all beer and malt beverage  
16 laws and regulations not in conflict with the provisions of this act.

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18 SECTION 5. Licenses - Scope - Restrictions.

19 (a) The Director of the Alcoholic Beverage Control Division may issue  
20 a license for a licensee:

21 (1) To operate a small brewery that:

22 (A) Manufactures, at its licensed facility, no less than  
23 thirty-five percent (35%) of its beer and malt beverages to be sold in the  
24 state, or purchases from a producer brewery, beer or malt beverages in an  
25 aggregate quantity not to exceed sixty thousand (60,000) barrels per year;

26 (B) Sells to wholesale or to the consumer for consumption  
27 either on or off the premises brand name products of the licensed facility;  
28 and

29 (C) Stores any beer and malt beverages legally purchased  
30 for resale on the premises; or

31 (2) To operate a microbrewery-restaurant that:

32 (A) Manufactures beer and malt beverages in an aggregate  
33 quantity not to exceed five thousand (5,000) barrels per year;

34 (B) Sells to wholesale or retail dealers or to the  
35 consumer for consumption either on or off the premises, however, off premise  
36 sales are limited to brand name products of the licensed facility; and

1 (C) Stores any beer and malt beverages purchased for  
2 resale on the premises.

3 (b) Notwithstanding the provisions of any other law to the contrary,  
4 beer and malt beverages may be sold for on-premises or off-premises  
5 consumption during all legal operating hours in which business is normally  
6 and legally conducted on the premises, if:

7 (1) The brewery provides tours through its facility; and

8 (2) Only sealed containers are removed from the premises.

9 (c)(1) A native brewery may provide beer and malt beverages it  
10 manufactures to charitable or nonprofit organizations or sell for resale beer  
11 and malt beverages it manufactures to charitable or nonprofit organizations  
12 holding valid special event permits issued by the Alcoholic Beverage Control  
13 Board.

14 (2) The sale of those products is limited to the duration of the  
15 particular special event.

16 (d) Any person holding a valid microbrewery-restaurant license is  
17 considered a native brewery licensee that maintains production limits  
18 according to the definition of microbrewery-restaurant in section three (3)  
19 of this act.

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21 SECTION 6. Additional license to sell native beer and malt beverages  
22 not required.

23 (a) Any wholesale or retail dealer that is licensed to sell beer and  
24 malt beverages may sell beer and malt beverages produced by native brewers  
25 without any additional license fee.

26 (b) Any retail dealer not licensed to sell beer and malt beverages  
27 may sell beer and malt beverages produced by native brewers, if the retailer  
28 pays a retail dealer's license fee of fifteen dollars (\$15.00) to the  
29 Alcoholic Beverage Control Division.

30 (c) Any person not licensed as a wholesale dealer of beer and malt  
31 beverages may sell, on a wholesale basis, beer and malt beverages produced by  
32 native brewers, if the person pays a wholesale dealer's license fee of fifty  
33 dollars (\$50.00) to the Alcoholic Beverage Control Division.

34  
35 SECTION 7. Transportation.

36 (a) A native brewery may transport its beer and malt beverages along

1 any highway, road, street, or other thoroughfare of travel.

2 (b) Any native brewery may ship its products out of the state by  
3 common carrier or other appropriate parcel delivery service, and common  
4 carriers and other appropriate parcel delivery services may accept beer and  
5 malt beverages from Arkansas native brewers for delivery outside the state.

6 (c) Any native brewery in this state may ship its products within the  
7 state by common carrier or other appropriate parcel delivery service, and  
8 common carriers and other appropriate parcel delivery services may accept  
9 beer and malt beverages from Arkansas native breweries for delivery within  
10 the state, if the beer and malt beverages are only shipped to persons holding  
11 a wholesale permit to purchase, store, sell, or dispense beer and malt  
12 beverages.

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14 SECTION 8. Fees and Taxes

15 A native brewer shall:

16 (1) Pay any applicable city or county license or permit fees and  
17 barrelage or taxes and shall pay a state licensing fee to the Alcoholic  
18 Beverage Control Division of two hundred fifty dollars (\$250) per fiscal year  
19 to manufacture and sell its beer and malt beverages for consumption, both on  
20 and off the premises and to sell any other beer and malt beverages purchased  
21 from a licensed dealer for consumption on or off the premises;

22 (2) Measure beer and malt beverages manufactured by the native  
23 brewer or purchased from a producer brewery, or otherwise comply with  
24 applicable regulations respecting excise and enforcement tax determination of  
25 the beer and malt beverages, and pay any applicable bond or deposit and the  
26 amount of the state excise tax and enforcement tax to this state as required,  
27 but is free from the fees and taxes provided in Arkansas Code § 3-5-205 and  
28 as required by Arkansas Code §§ 3-7-104 and 3-7-111; and

29 (3) Pay a tax at the rate of seven dollars and fifty cents  
30 (\$7.50) per barrel, and proportionately for larger and smaller gallonages per  
31 barrel, on all beer and malt beverages in quantities of up to sixty-thousand  
32 (60,000) barrels per year and sold or offered for sale in the state.

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34 SECTION 9. Beer and malt beverage education.

35 (a)(1) Native brewers may be allowed to conduct beer and malt beverage  
36 tasting events for educational or promotional purposes at any location in

1 this state, if approved by the Alcoholic Beverage Control Division and  
2 written notice is given by the Alcoholic Beverage Division to the native  
3 brewer at least five (5) days before the event.

4 (2) Requests for approval to conduct beer and malt beverage  
5 tasting events must be received by the Alcoholic Beverage Control Division at  
6 least two (2) weeks before the event.

7 (b) Beer and malt beverage tasting events may be held in any facility  
8 licensed by the Alcoholic Beverage Control Division if written notice is  
9 given by the Alcoholic Beverage Control Division under subsection (a) of this  
10 section.

11 (c) The criminal penalties for drinking in public as prescribed by  
12 Arkansas Code § 5-71-212 are not applicable to any beer and malt beverage  
13 tasting event approved by the Alcoholic Beverage Control Division under this  
14 section.

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16 SECTION 10. Licenses - Application.

17 No native brewers license shall be issued unless the applicant shall  
18 file with the director a verified application, in a form and content as the  
19 director shall require, accompanied by payment of the applicable fee.

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21 SECTION 11. Operation without license prohibited.

22 It is a Class C misdemeanor for any person not holding a valid native  
23 brewers license to operate as a native brewer.

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25 SECTION 12. Dry areas prohibited.

26 It is unlawful for the director to issue a native brewers license in  
27 any city, county, township, or other area in this state if the sale or  
28 possession of beer and malt beverages is unlawful.

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30 SECTION 13. Rules and regulations.

31 The Director of the Alcoholic Beverage Control Board and the Director  
32 of the Department of Finance and Administration, may adopt rules for the  
33 implementation of this act.

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35 SECTION 14. This act is supplemental to all other laws concerning  
36 alcoholic beverages and repeals only those laws or parts of laws in direct

1 conflict with it.

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/s/ Ledbetter

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