

ALCOHOLIC BEVERAGE CONTROL BOARD

(2306a)

SUBJECT: Revisions to Alcoholic Beverage Control Rules

DESCRIPTION: The following five proposed rules have been filed with the Bureau:

Amendment to 4.6 – Definition of a Restaurant – This defines a restaurant for purposes of alcoholic beverage service.

New Regulation Section 5.14.2 – Definition of a Restaurant for Private Clubs – This defines a restaurant for purposes of a private club. It is needed to insure that those private clubs that hold themselves out as restaurants comply with the definition of a restaurant.

Repeal of Section 5.5 – Guest Books in Private Clubs – This repeals the requirement that private clubs maintain a guest book. The guest book requirement is not founded in Arkansas law and goes mainly unenforced and ignored. At present, the requirement applies to only private clubs in dry areas of the state. [WITHDRAWN]

Repeal of Section 5.10 – Membership Books in Private Clubs – This repeals the requirement that private clubs maintain a membership book. The membership book requirement is not founded in law and most private clubs now keep membership information on computers. [WITHDRAWN]

Amendment to 5.30 – Service of Alcoholic Beverages at Private Clubs to Members and Guests – This amendment provides that guests of members of private clubs in dry areas of the state must be in the physical company of a member in order to be served alcoholic beverages. It also repeals the requirement that a private club in a dry area maintain a guest book and that guests must be introduced as guest by a member.

PUBLIC COMMENT: A public hearing was held August 21, 2013. The public comment period expired August 21, 2013. The Division received no public comments on the above rules.

Isaac Linam, an attorney with the Bureau of Legislative Research, asked the following question:

QUESTION: In Section 4.6, the phrase "has a seating capacity of at least fifty (50) people" is included in the definition of "Restaurant". The rest of the definition appears to be derived from new language in Acts 2013, No. 1100, but the above phrase was repealed in the definition of "restaurant" in the Act. Why is that phrase still included in your rules? Please see Section 5.14.2 for the same or similar issue. **RESPONSE:** Regarding the "seating capacity of at least fifty (50) people" language in Section 4.6 and 5.14.2, the Division has received input from law enforcement officials requesting this language. The idea is to avoid issuing this type of permit to a "honky tonk", where drinking is more prevalent than eating.

The effective date of these rules was April 23, 2014.

CONTROVERSY: These rules are not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Ark. Code Ann. § 3-2-206 provides that the Director of the Alcoholic Beverage Control Division to promulgate rules necessary to carry out the intent and purposes of the alcohol control acts of Arkansas. Ark. Code Ann. § 3-2-205(b) bestows onto the Alcoholic Beverage Control Division power to adopt rules “for the supervision and control of the manufacture and sale of vinous (except wines), spirituous, or malt liquors throughout the state”. Ark. Code Ann. § 3-9-225 directs the Alcoholic Beverage Control Board to establish rules for permits to operate a private club.

Ark. Code Ann. § 3-2-206 provides that the intent of “this grant of power to adopt rules and regulations that the director shall be clothed with broad discretionary power to govern the traffic in alcoholic liquor and to enforce strictly all the provisions of the alcohol control laws of this state”.

The amendment to Section 4.6 is being made to comply with Acts 2013, No. 1100.

PIL 12/11/14