

1 INTERIM STUDY PROPOSAL 2017-046

2 State of Arkansas As Engrossed: H3/14/17 H3/23/17 H3/29/17

3 91st General Assembly

**A Bill**

4 Regular Session, 2017

HOUSE BILL 2197

5  
6 By: Representative Penzo

7 By: Senator J. Hutchinson

8 Filed with: House Select Committee on Rules  
9 pursuant to A.C.A. §10-3-217.

10 **For An Act To Be Entitled**

11 AN ACT TO AMEND THE LAW REGARDING THE OPERATIONS OF  
12 RETAIL LIQUOR STORES AND LIQUOR DISTRIBUTORS; AND FOR  
13 OTHER PURPOSES.

14  
15  
16 **Subtitle**

17 TO AMEND THE LAW REGARDING THE OPERATIONS  
18 OF RETAIL LIQUOR STORES AND LIQUOR  
19 DISTRIBUTORS.

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

23  
24 *SECTION 1. Arkansas Code Title 3, Chapter 4, is amended to add*  
25 *additional subchapters to read as follows:*

26 *Subchapter 11 – Pool Buying*

27  
28 *3-4-1101- Definitions.*

29 *As used in this subchapter:*

30 *(1) "Member of a pool buying group" means a licensee reported by*  
31 *a pool buying agent and approved by the Alcoholic Beverage Control Division;*

32 *(2) "Pool buying" means the combining of orders into a single*  
33 *transaction, by two (2) but no more than ten (10) retail liquor permittees,*  
34 *who are members of a cooperative or pool buying group for maximizing*  
35 *purchasing power and approved by the division; and*

1           (3) "Pool buying agent" means a vendor designated by a pool  
2 buying group in a pool buying agreement.

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4           3-4-1102. Pool buying agent Licensure.

5           (a) A pool buying agent must be licensed under this subchapter.

6           (b) A license under this section shall authorize a pool buying agent  
7 to purchase the types of alcoholic beverages that the agent orders on behalf  
8 of the members of a pool buying group.

9           (c) The Alcoholic Beverage Control Board shall adopt rules to create a  
10 pool buying agent license.

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12           3-4-1103. Pool buying agreements.

13           (a)(1) Before beginning operations, a pool buying group shall file  
14 with the Alcoholic Beverage Control Division a copy of the agreement under  
15 which the members of the pool buying group will operate.

16           (2) The division shall review the agreement and if the  
17 requirements of applicable law and the rules are met, shall approve the  
18 agreement.

19           (b) A proposed amendment to a pool buying agreement shall be filed  
20 with and approved by the division in the same manner as the original  
21 agreement before the proposed amendment becomes effective.

22           (c) A pool buying agreement shall include without limitation:

23           (1) The name and address of the members of a pool buying group;

24           (2) The name of the buying agent for the pool buying group; and

25           (3) For each member of the pool buying group, the licensee's  
26 name, business name, license number, and the date on which the licensee  
27 joined the pool buying group.

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29           3-4-1104. Pool buying group operations.

30           (a) A pool buying group may hire employees to act in an administrative  
31 or management capacity for the members of a pool buying group's purchase of  
32 alcoholic beverages.

33           (b) Except for products purchased as part of a pool order documented  
34 under § 3-4-1106, members of a pool buying group shall not make sales or  
35 transfers of alcoholic beverages between members of the pool buying group.

1       (c) A member of a pool buying group is not eligible to place an order  
2 with the pool buying group until the member has executed the pool buying  
3 agreement and the licensee's name, business name, license number and date of  
4 membership have been filed with and approved by the Alcoholic Beverage  
5 Control Division.

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7       3-4-1105. Procedures for pool buying group orders.

8       (a) All changes, additions, and deletions to the membership of a pool  
9 buying group shall be made using forms approved by the Alcoholic Beverage  
10 Control Division.

11       (b) Upon the transfer, suspension, or revocation of an alcoholic  
12 beverage license or permit held by a member of a pool buying group, the  
13 division shall delete the licensee or permittee from membership in the pool  
14 buying group.

15       (c)(1) An individual member of a pool buying group shall place orders  
16 under this subchapter with and remit payment to the pool buying agent.

17       (2) Payments under this subchapter shall be made payable to the  
18 pool buying agent or the distributor.

19       (3) Distributors of alcoholic beverages may accept pool buying  
20 group orders and payment only from the designated buying agent of a pool  
21 buying group.

22       (d)(1) All pool buying orders for alcoholic beverages shall be ordered  
23 from distributors by the pool buying agent.

24       (2) All pool buying group orders shall place the order under the  
25 name of the pool buying group and indicate each licensed vendor's part of the  
26 pool buying group order.

27       (3)(A) Each distributor and pool buying agent shall keep the  
28 individual invoices for each member's portion of the pool buying order.

29       (B) A master invoice under § 3-4-1106 shall include all  
30 alcoholic beverages ordered under this subchapter and shall refer to each  
31 associated invoice supporting the master invoice.

32       (4) Each wholesaler shall deliver each licensee's or permittee's  
33 part of the pool buying group order to the licensee's or permittee's place of  
34 business.

35       (5) All parties to a transaction under this subchapter shall  
36 maintain records of purchases made between permit holders.

1 (e) If a payment is not timely made for a pool buying order, the pool  
2 buying group and all members of the pool buying group shall be considered  
3 delinquent accounts and reported to the division.

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5 3-4-1106. Recordkeeping.

6 (a) A distributor shall prepare and keep a master invoice that  
7 identifies:

8 (1) The total pool buying group order placed by the pool buying  
9 agent; and

10 (2) Each pool buying group order member's portion of the total  
11 pool buying group order by setting forth the name of the pool buying agent  
12 making the order.

13 (b)(1) Distributors and pool buying agents shall keep invoices for  
14 members of a pool buying group purchases for a period of three (3) years.

15 (2) For each pool buying group order, an invoice shall include  
16 without limitation:

17 (A) The date and the name of the distributor with whom the  
18 order was placed;

19 (B) The names and license or permit numbers of each member  
20 of a pool buying group participating in the pool buying group order;

21 (C) The brand, size, and quantity of alcoholic beverages  
22 ordered by each member of a pool buying group; and

23 (D) The cost to each member of the pool buying group for  
24 his or her share of the pool buying group order and any vinous and spirituous  
25 beverage discount given on the pool buying group order.

26 (c)(1) Sale of alcoholic beverages ordered as part of a single pool  
27 buying group order from a permit holder who received the products is a  
28 purchase between members of a pool buying group, if a record of the  
29 transaction is made by the member of the pool buying group member  
30 transferring the products to another member of a pool buying group and  
31 retained by both pool buying group members for a period of three (3) years  
32 after the date of transfer.

33 (2) A record created under subdivision (c)(1) of this section  
34 shall include without limitation the:

35 (A) Business name and license or permit number of each  
36 license or permit holder;

1 (B) Names, sizes, and quantities of products transferred;

2 (C) Date of original delivery of products from the pool  
3 buying group order;

4 (D) Date physical transfer of products was made; and

5 (E) Unique identifier that links the record with the pool  
6 buying group order.

7 (d) Upon written request, a pool buying agent shall make available to  
8 an employee of the Alcoholic Beverage Control Division for inspection all  
9 papers and reports related to pool buying group orders, purchases, and  
10 payments within ten (10) days of the request by the employee of the division.

11  
12 Subchapter 12 – Delivery Service License

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14 3-4-1201. Delivery service license – Creation.

15 (a) Effective September 1, 2017, there is created a delivery service  
16 license to be issued by the Alcoholic Beverage Control Board to a delivery  
17 service that:

18 (1) Delivers prepared food from restaurants to customers as part  
19 of the delivery service’s business; and

20 (2) Seeks to deliver sealed packages of alcoholic beverages or  
21 beer or both sold by a retailer licensed under this title.

22 (b)(1)(A) A person, partnership, limited liability company, or  
23 corporation desiring to deliver sealed packages of alcoholic beverages or  
24 beer sold by a retailer licensed under this title as part of the delivery  
25 service shall apply to the board for a delivery service license.

26 (B) The application shall be in writing and verified on  
27 forms authorized by the board.

28 (2)(A) A person applying for a delivery service license shall be  
29 twenty-one (21) years of age or older and shall not have been convicted of a  
30 felony.

31 (B) The board may issue a delivery service license to an  
32 individual, partnership, limited liability company, or corporation that is  
33 registered to do business in the State of Arkansas regardless of the  
34 residence of the ownership of the individual, partnership, limited liability  
35 company, or corporation.

1       (c) Each applicant for a delivery service license shall pay to the  
2 board an annual license fee of three hundred dollars (\$300).

3       (d)(1) Each delivery service licensee shall conduct or have a third  
4 party conduct a local and national criminal background check on a potential  
5 employee that seeks to be licensed under this subchapter.

6               (2) A background check under this section shall include a  
7 multistate criminal records locator or other similar commercial nationwide  
8 database with validation.

9       (e) Each delivery service licensee shall ensure that each employee  
10 delivering alcoholic beverages or beer is licensed under this subchapter.

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12       3-4-1202. Delivery employee license – Creation.

13       (a) Effective September 1, 2017, there is created a delivery employee  
14 license to be issued by the Alcoholic Beverage Control Board to an individual  
15 employed by a person who delivers alcoholic beverages or beer under this  
16 subchapter.

17       (b)(1) An individual seeking a delivery employee license shall make  
18 application for the license by completing an application form prescribed by  
19 the board.

20               (2) An applicant shall demonstrate that the applicant:

21                       (A) Is at least twenty-one (21) years of age;

22                       (B) Has been subject to a state and federal criminal  
23 background check under this subchapter to ensure the individual has not been  
24 convicted of a crime involving the sale or distribution of alcohol within the  
25 previous eight (8) years and has not been convicted of any felony within the  
26 previous five (5) years;

27                       (C) Has a valid driver's license; and

28                       (D)(i) Has completed a responsible alcohol server course  
29 approved by the Alcoholic Beverage Control Division.

30                               (ii) A course offered under subdivision (b)(2)(D)(i)  
31 of this section shall be completed every two (2) years.

32       (c) An individual applying for a license under this section shall pay  
33 to the board a fee of fifty dollars (\$50.00).

34       (d) A delivery employee license shall be valid for two (2) years.

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36       3-4-1203. Delivery service operations.

1           (a) Effective September 1, 2017, a delivery service that delivers  
2 prepared food from restaurants to customers as part of the delivery service's  
3 business may deliver sealed packages of alcoholic beverages or beer or both  
4 sold by a retailer licensed under this title to the delivery service's  
5 customers if:

6                   (1) The amount of alcoholic beverages and beer delivered to a  
7 customer does not exceed more than two gallons (2 gal.) per customer per  
8 delivery;

9                   (2) At least fifty percent (50%) of the delivery service's gross  
10 sales come from the delivery of food products or prepared food;

11                   (3) A delivery service employee who delivers alcoholic beverages  
12 or beer or both is twenty-one (21) years of age or older;

13                   (4) The delivery service has:

14                           (A) Made more than five thousand (5,000) deliveries in the  
15 State of Arkansas;

16                           (B) Posted a performance bond of five hundred thousand  
17 dollars (\$500,000); and

18                           (C) Insurance coverage for the delivery of alcoholic  
19 beverages;

20                   (5) The delivery service has a written agreement with a retailer  
21 to deliver the retailer's alcoholic beverages or beer to customers; and

22                   (6) Before a customer is allowed possession of alcoholic  
23 beverages or beer, a delivery service employee who delivers alcoholic  
24 beverages or beer requires the customer to show a valid, government-issued  
25 document, such as a driver's license or other form of identification deemed  
26 acceptable to the employee, that includes the photograph and birth date of  
27 the customer establishing that the customer is twenty-one (21) years of age  
28 or older.

29           (b) A delivery service shall not be prohibited from charging a fee to  
30 customers when delivering sealed packages of alcoholic beverages or beer sold  
31 by a retailer.

32           (c) A delivery service shall make its services available to all permit  
33 holders under this title in the service area of the delivery service.

34           (d) A delivery under this subchapter shall not be made to any area of  
35 the state in which the manufacture or sale of intoxicating liquor is  
36 prohibited.

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3-4-1204. Rules.

The Alcoholic Beverage Control Board may adopt rules to implement this subchapter.

/s/Penzo

Referred by the Arkansas House of Representatives

Prepared by: VJF