

Hall of the House of Representatives

91st General Assembly - Regular Session, 2017

Amendment Form

Subtitle of House Bill No. 2153

TO AMEND TITLE 3 OF THE ARKANSAS CODE REGARDING PERMITS FOR ALCOHOLIC BEVERAGE
BUSINESSES.

Amendment No. 1 to House Bill No. 2153

Amend House Bill No. 2153 as originally introduced:

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code Title 3, Chapter 3, Subchapter 1, is amended to add an additional section to read as follows:

3-3-104. Prohibition on services offered to a grocery store wine permittee.

(a) A wholesaler, manufacturer, small farm winery, or nonresident seller holding a permit under this title or an employee, agent, representative, or salesperson employed by or representing a wholesaler, manufacturer, small farm winery, or nonresident seller holding a permit under this title shall not provide services to or for the benefit of a grocery store wine permittee including, without limitation services involving shelving, dressing, displaying, or setting inventory owned or purchased by the grocery store wine licensee.

(b) This section does not prevent a wholesaler licensed under this title from unloading wine at a grocery store wine location at the location's customary loading dock.

SECTION 2. Arkansas Code § 3-4-201 is amended to read as follows:

3-4-201. Number of permits restricted.

(a) As used in this section, "emergency circumstances" means delays in return to business that are beyond the control, planning, or foresight of the permit holder, including without limitation, a:

- (1) Delay due to a natural disaster;
- (2) Pending court action;
- (3) Building construction problem; and
- (4) Contested insurance claim.

~~(a)~~(b) The public policy of the state is to restrict the number of permits in this state to dispense vinous (except small farm wines), spirituous, or malt liquor.

~~(b)~~~~(1)~~(c)(1) The Alcoholic Beverage Control Board shall determine whether public convenience and advantage will be promoted by issuing a permit and by increasing or decreasing the number of permits it issues.



(2) The number of permits issued by the board shall be restricted.

~~(e)~~(d) The board has the discretion to determine the number of permits to be granted in each county of this state or within the corporate limits of any municipality of this state and to determine the location and the persons to whom the permits shall be issued, under the following conditions:

(1) The number of permits allowing the off-premises sale of vinous (except small farm wines), spirituous, or malt liquor in the State of Arkansas shall not exceed a ratio of one (1) permit for every seven thousand five hundred (7,500) population residing in the state;

~~(1)(A)~~(2)(A) The number of permits allowing the off-premises sale of vinous (except small farm wines), spirituous, or malt liquor in a county or political subdivision of the county which permits the sale shall not exceed a ratio of one (1) permit for every ~~five thousand (5,000)~~ seven thousand five hundred (7,500) population residing in that county or political subdivision of the county.

(B) Population of the state, county or political subdivision of the county shall:

(i) Be determined according to the most recent federal decennial census; and

(ii) Count all residents of the state, county or political subdivision of the county, including without limitation the residents of a dry political subdivision of a county; ~~and~~

~~(2)~~(3) A new permit that is ~~issued~~ authorized in a county or political subdivision following the most recent federal decennial census shall be issued under the following restrictions:

(A) Additional permits may be issued on a ratio of one (1) for every additional ~~five thousand (5,000)~~ seven thousand five hundred (7,500) population within the county or political subdivision of the county;

(B)(i) A qualified applicant may apply for a permit.

(ii) Qualifications are to be set by the board and its determination of the public convenience and advantage;

~~(3)(A)~~(4)(A) If it is determined that a county or political subdivision of the county is entitled to additional permits when warranted by the most recent federal decennial census, the board will announce before the last date for applications the number of new permits, if any, which may be issued in the county or political subdivision of the county.

(B) In the event that the most recent federal decennial census population figures decline in a county or political subdivision of the county:

(i) Existing permits shall not be cancelled or revoked for the decline in population;

(ii) The quota ratio shall not be applied to the county or political subdivision of the county until the population in the county or political subdivision of the county reaches a number equaling one (1) permit to every ~~five thousand (5,000)~~ seven thousand five hundred (7,500) population; and

(iii) A new permit shall not be issued in the county or political subdivision of the county until the population warrants.

~~(C) A transfer of locations from one county to another county is not allowed.~~

~~(D)~~(C) If a holder of a permit for the sale of vinous

(except small farm wines), spirituous, or malt liquor surrenders the permit in a county or political subdivision of the county where the ratio no longer meets the ~~one to five thousand population~~ one-to-seven thousand-five-hundred-population requirement, new applications will not be accepted until that ratio is reestablished at a subsequent federal decennial census;

~~(4)(A)(i)~~(5)(A)(i) If a permit holder does not conduct business under a permit issued for a period of more than thirty (30) days, the permit shall be surrendered to the Director of the Alcoholic Beverage Control Division and shall be placed on inactive status.

(ii) The permit may remain inactive for six (6) months or until the permit holder notifies the director that he or she is ready to resume business, whichever is longer.

(B) To secure the return of the permit, the permit holder shall file with the director a written statement showing:

(i) That all taxes and fees owing to the state have been paid;

(ii) The reason for the suspension of business activities; and

(iii) The date business activity will resume.

(C)(i) The permit holder may petition the board for an extension of inactive status for an additional six-month period.

(ii) The board may grant an initial extension upon a showing by the permit holder and a finding by the board that:

(a) Business circumstances exist to justify an extension;

(b) The delay to return to business was not due to mere deferral or inattention on the part of the permit holder; and

(c) The inactive status should be extended.

~~(iii)(a)~~ The permit holder may appeal to the board for a second extension of inactive status for an additional six-month period, but only upon a showing by the permit holder and a finding by the board that emergency circumstances exist to justify a final extension.

~~(b) "Emergency circumstances" are those delays in return to business which are beyond the control, planning, or foresight of the permit holder, including without limitation, a:~~

~~(1) Delay due to a natural disaster;~~

~~(2) Pending court action;~~

~~(3) Building construction problem; and~~

~~(4) Contested insurance claim.~~

(D) A permit remaining on inactive status for a period of more than eighteen (18) months or which has not been granted an extension under this subdivision shall expire; and

~~(5)(A)(6)(A)~~ This section and §§ 3-4-202 and 3-4-208, except a permit on inactive status for more than eighteen (18) months after the provisions of subdivision (c)(4) of this section become effective or which has expired in accordance with subdivision (c)(4) of this section, do not divest any permit holder holding the permit on ~~July 1, 1991~~ September 1, 2017, regardless of the quota ratio, of his or her permit.

(B) In a county or political subdivision of the county which has a ratio lower than the permit quota ratio of ~~one to five thousand population~~ one-to-seven thousand-five-hundred-population, the permit holder shall be allowed to continue under subdivision (c)(3)(B) of this section.

~~(d) This section shall apply only to applications for permits to dispense vinous (except small farm wines), spirituous, or malt liquor filed with the board after July 1, 1991.~~

SECTION 3. Arkansas Code Title 3, Chapter 4, is amended to add an additional subchapter to read as follows:

Subchapter 11 – Pool Buying

3-4-1101- Definitions.

As used in this subchapter:

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

(2) "Pool Buying" means the combining of orders into a single transaction, by two (2) to more retail liquor permittees, who are members of a cooperative or pool buying group for maximizing purchasing power and approved by the division; and

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

3-4-1102. Pool buying agent Licensure.

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

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

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

3-4-1103. Pool buying agreements.

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

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

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

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

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

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

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

3-4-1104 . Pool buying groups operations.

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

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

(c) A member of a pool buying group is not eligible to place an order

with the pool buying group until the member has executed the pool buying agreement and the licensee's name, business name, license number and date of membership have been filed with and approved by the Alcoholic Beverage Control Division.

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

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

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

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

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

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

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

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

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

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

(4) Each wholesaler shall deliver each licensee's or permittee's part of the pool order to the licensee's or permittees place of business.

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

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

3-4-1106. Recordkeeping.

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

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

(2) Each pool buying group order members portion of the total pool buying group order by setting forth the name of the pool buying agent making the order.

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

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

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

(B) The names and license or permit numbers of each member

of a pool buying group participating in the pool buying group order;

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

(D) The cost to each member for its share of the pool buying group order and any vinous and spirituous beverage discount given on the pool buying group order.

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

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

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

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

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

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

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

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

The Amendment was read _____
By: Representative Penzo
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Chief Clerk