

**ARKANSAS SENATE**  
91st General Assembly - Regular Session, 2017  
**Amendment Form**

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**Subtitle of Senate Bill No. 378**

TO MODERNIZE THE LAW REGARDING THE BUSINESS OPERATIONS OF RETAIL LIQUOR STORES;  
TO ALLOW RETAIL LIQUOR STORES TO SHIP AND DELIVER ALCOHOLIC BEVERAGES; AND TO  
SELL FOOD AND ASSOCIATED MERCHANDISE.

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**Amendment No. 1 to Senate Bill No. 378**

Amend Senate Bill No. 378 as originally introduced:

Page 1, line 23, delete "ALCOHOLIC" and substitute "ALCOHOLIC"

AND

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 permittee.

(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 ~~(e)(4)~~ (d)(5) of this section become effective or which has expired in accordance with subdivision ~~(e)(4)~~ (d)(5) 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 ~~(e)(3)(B)~~ (d)(4)(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 § 3-4-404 is amended to read as follows:  
3-4-404. Class B violations.

The following acts on the part of the permittee are Class B violations:

- (1) Pledge, hypothecation, or use of a permit as collateral;
- (2) Defacing, destroying, or altering a permit;
- (3) Transporting controlled beverages in violation of regulations or law;
- (4) Manufacturing, selling, offering, dispensing, or giving away, possessing, or transporting controlled beverages upon which tax is not paid;
- (5) Failure to maintain proper records by a manufacturer;
- (6) Failure by a wholesaler to maintain proper records;
- (7) Failure by a wholesaler to register new brands;
- (8)(A) Giving samples without authorization.
- (B) A rewards program offered by a retail liquor permittee to a retail customer who frequently makes purchases is not a gift under this subdivision (8);
- (9)(A) Sales, including sales from a wholesaler to a retailer for anything other than cash, ~~or~~ check, debit card, or credit card.
- (B)(i) A wholesaler's invoice to a retailer shall reflect separately any credit card surcharge added.
- (ii) The amount of a surcharge on an invoice under subdivision (9)(B)(i) of this section shall not exceed the amount charged to the wholesaler by the credit card processor;
- (10) Delivery without an invoice by a wholesaler;
- (11) Selling to the insane;
- (12) Selling to bootleggers;
- (13) Accepting food stamps in payment for controlled beverages;
- (14) Unlawful manufacture or sale in a dry area; and
- (15) Sale of controlled beverages by vending machine.

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

3-4-408. Wholesaler authorized to extend credit.

(a) A wholesaler may extend credit on distilled spirits and wine sold to a retail liquor permit holder for a period not to exceed thirty (30) days from the date of invoice, with the date of invoice included in the total number of days.

(b) When the thirty-day period under subsection (a) of this section has passed without payment in full, sales or deliveries of distilled spirits or wine shall not be made by a wholesaler to a retailer whose name appears on the list of credit extended under subsection (a) of this section.

(c) Once payment in full has been made by the delinquent retailer to the reporting wholesaler, the reporting wholesaler shall notify the Alcoholic Beverage Control Division within twenty-four (24) hours that payment has been made.

SECTION 5. Arkansas Code § 3-4-604, concerning retail liquor permits, is amended to add additional subsections to read as follows:

(h)(1) A permittee under this section may ship vinous and spirituous liquors for beverage purposes to a private residence.

(2) A permittee under this section may deliver vinous and spirituous liquors for beverage purposes to a private residence.

(i) A permittee under this section may sell:

(1) Food; and

(2)(A) Merchandise related to the preparation and consumption of alcoholic beverages.

(B) The Alcoholic Beverage Control Board shall adopt rules regarding the sale of merchandise under subdivision (i)(2)(A) of this section.

(j) A permittee under this section may use a credit card belonging to the permittee to pay a wholesaler or distributor for the purchase of vinous or spirituous liquors.

(k) A group of no more than four (4) permittees under this section may cooperate in purchasing vinous and spirituous liquors from a wholesaler or distributor.

SECTION 6. Arkansas Code Title 3, Chapter 4, is amended to add additional subchapters 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) or 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 authorize 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 the 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 pool buying 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 group's 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 buying group orders and payment only from the designated buying agent of a pool buying group.

(d)(1) All pool buying group 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 buying group 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 buying group order to the licensee's or permittee's 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 a pool buying group 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's 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 of a pool buying group for his or her 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 member of the pool buying group who is transferring the products to another member of a pool buying group and retained by both members of the pool buying groups 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.

#### Subchapter 12 – Delivery Service License

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) An applicant shall demonstrate that the applicant:

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

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

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

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



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

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

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

3-4-1203. Delivery service operations.

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

(1) The amount of alcoholic beverages and beer delivered to a customer does not exceed more than one gallon (1 gal.) per customer per delivery;

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

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

(4) The delivery service has made more than one hundred thousand (100,000) deliveries in the State of Arkansas;

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

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

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

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

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

SECTION 7. Arkansas Code § 3-5-104(f)(2)(B), concerning samples at wine tasting events, is amended to read as follows:

(B) The samples shall be limited to a total of:

(i) ~~Three (3) one-half ounce (0.5 oz.)~~ Up to six ounces (6 oz.) wine servings per customer each day for on-premises consumption;

(ii) ~~Two (2) two ounce (2 oz.)~~ Up to eight ounces (8 oz.) beer servings per customer each day for on-premises consumption; and

(iii) ~~Two (2) one-half ounce (0.5 oz.)~~ Up to three ounces (3 oz.) spirit servings per customer each day for on-premises consumption.

SECTION 8. Arkansas Code § 3-5-1801, concerning definitions for wine

sales in grocery stores, is amended to read as follows:

3-5-1801. Definitions.

As used in this subchapter:

(1) "Basic cost of wine" means the invoice cost of wine to the retailer in the quantity last purchased from the wholesaler at prices generally available in the marketplace, absent any cash or other discounts, incentives or concessions that are offered within or outside of this state, to which shall be added the full face value of any taxes, freight or delivery fees that may be required by any tax law of this state imposed upon wine supplied to retailers now in effect or hereafter enacted, and any other taxes or fees imposed by this title, if not already included by the wholesaler in this price;

(2) "Cost of doing business by the retailer" means thirty percent (30%) of the basic cost of wine to the retailer;

(3) "Cost to the retailer" means the basic cost of wine to the retailer plus the cost of wine to the retailer;

~~(1)~~(4) "Grocery store" means a single physical establishment that:

(A) Has an inventory of human-consumable items; and

(B) Is located in a wet territory;

~~(2)~~(5) "Slotting allowance" means an allowance paid by a manufacturer to a grocery store for making room for a product on the grocery store's shelves; and

~~(3)~~(6) "Wine" means port, wine, sherry wine, vermouth wine, or other wines manufactured within or without the State of Arkansas, the alcoholic content of which does not exceed twenty-one percent (21%).

SECTION 9. Arkansas Code Title 3, Chapter 5, Subchapter 18, is amended to add an additional section to read as follows:

3-5-1804. Below-cost sales prohibited.

A person holding a grocery store wine permit shall not sell wine below the cost to the retailer.

SECTION 10. DO NOT CODIFY. Effective date.

A grocery store wine permit under § 3-5-1801 et seq. shall not be issued until January 1, 2018."

The Amendment was read the first time, rules suspended and read the second time and \_\_\_\_\_

By: Senator J. Hutchinson

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Secretary