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Section 1.81 Suspension of Permit When No Business Conducted for a Period of Thirty Days; Inactive Status of Permits. In the event a permittee does not conduct business under any permit issued for a period of thirty (30) days, the permit shall be surrendered to the Director and shall be placed on inactive status. Inactive status shall commence at the end of thirty (30) days after close of business, regardless of whether the permit is surrendered to the Director. In any event, for purposes of this ~~Regulation~~Rule, a business that has been closed for a period of thirty (30) days shall be deemed to be on inactive status. The permit may remain inactive for ~~six (6)~~three (3) months ~~or until the permittee notifies the Director that he is ready to resume business, whichever is shorter, subject to the permittee's petition to the Alcoholic Beverage Control Board for an extension of inactive status provided for in this Regulation.~~ "Ready to resume business" includes the resumption of business at the permitted location or the filing of an acceptable application with the agency to transfer the location of the permitted business. ~~If said application to transfer the location of the permitted business is granted conditional, the conditions must be met within twelve (12) months from the final agency decision granting the transfer application or the application will be cancelled. In order to extend the twelve (12) month conditional period, written approval must be obtained from the Director or Board before the expiration of the twelve (12) month period.~~

~~Upon any such cancellation, the inactive status of the permit will be calculated from the time the final agency decision granting the transfer of location was rendered. To secure the return of the permit, the permittee shall file with the Director a written statement showing that all taxes and fees owing to the State have been paid, the reason for the suspension of business activities and the date business activity will resume. The date the business activity will resume must be before or on the following day after the expiration of the last day of the inactive status period and includes the resumption of business at the permitted location that means the outlet is open for business and prepared to sell or dispense alcoholic beverages or means the filing of an acceptable application with the agency to transfer the location of the permitted business or such permit shall expire. If said application to transfer the location of the permitted business is granted conditional, the conditions must be met within twelve (12) months from the final agency decision granting the transfer application or the application will be cancelled. In order to extend the twelve (12) month conditional period, written approval must be obtained from the Director or Board before the expiration of the twelve (12) month period or such permit shall expire. Upon any such expiration or cancellation, the inactive status of the permit will be calculated from the time the final agency decision granting the transfer of location was rendered.~~

The permittee may petition the Alcoholic Beverage Control Board for an extension of inactive status for an additional ~~six (6)~~three (3) month period. The Board may grant an initial extension upon a showing by the permittee and a finding by the Board that business circumstances exist to justify an extension, that the delay to return to business was not due to mere deferral or inattention on the part of the permittee, and that the inactive status should be extended. The permittee may appeal to the Alcoholic Beverage Control Board for a second extension of inactive status for an

additional six (6) month period, but only upon a showing by the permittee and a finding by the Board that emergency circumstances exist to justify a final extension. Emergency circumstances means ~~are those delays in return to business which~~ that are beyond the control, planning, or foresight of the permittee, including, but not limited to, delays due to a natural or man-made disaster, the pending adjudication of a lawsuit ~~court actions~~, a building construction problem, and a contested or delayed insurance claim or settlement.

Any permit remaining on inactive status for a period of more than ~~eighteen (18)~~twelve (12) months or which has not been granted an extension under the provision of this ~~Regulation~~Rule shall expire pursuant to written notice given to permit holders by this agency or to the provisions of ACA § 3-4-201 as they apply. Any permitted outlet which has been on inactive status in excess of six (6) months shall be re-inspected by the Alcoholic Beverage Control Enforcement Division to determine if the outlet is in compliance with required health and safety ~~regulation rules~~ and the outlet is open for business and prepared to sell or dispense alcoholic beverages before the permit(s) may be returned to active status. As part of the re-inspection process, the Alcoholic Beverage Control Enforcement Division shall give notice of the request to return to active status to the law enforcement officer who has primary jurisdiction over the site of the permitted outlet. The date the business activity will resume must be before or on the following day after the expiration of the last day of the inactive status period and includes the resumption of business at the permitted location that means the outlet is open for business and prepared to sell or dispense alcoholic beverages or such permit shall expire. (Amended 8-20-03 1-22-20)

SUMMARY OF SUBSTANTIVE CHANGES

Act 571 of 2019 shortens the time for inactive status. The initial inactive status is now 3 months, rather than six. The Act shortens the total time for inactive status from 18 months, with extensions, to 12 months, with extensions.

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To secure the return of the permit, the permittee shall file with the Director a written statement showing that all taxes and fees owing to the State have been paid, the reason for the suspension of business activities and the date business activity will resume. The date the business activity will resume must be before or on the following day after the expiration of the last day of the inactive status period and includes the resumption of business at the permitted location that means the outlet is open for business and prepared to sell or dispense alcoholic beverages or means the filing of an acceptable application with the agency to transfer the location of the permitted business or such permit shall expire. If said application to transfer the location of the permitted business is granted conditional, the conditions must be met within twelve (12) months from the final agency decision granting the transfer application or the application will be cancelled. In order to extend the twelve (12) month conditional period, written approval must be obtained from the Director or Board before the expiration of the twelve (12) month period or such permit shall expire. Upon any such expiration or cancellation, the inactive status of the permit will be calculated from the time the final agency decision granting the transfer of location was rendered.

The permittee may petition the Alcoholic Beverage Control Board for an extension of inactive status for an additional three (3) month period. The Board may grant an initial extension upon a showing by the permittee and a finding by the Board that business circumstances exist to justify an extension, that the delay to return to business was not due to mere deferral or inattention on the part of the permittee, and that the inactive status should be extended. The permittee may appeal to the Alcoholic Beverage Control Board for a second extension of inactive status for an additional six (6) month period, but only upon a showing by the permittee and a finding by the Board that emergency circumstances exist to justify a final extension. Emergency circumstances means delays in return to business that are beyond the control, planning, or foresight of the permittee, including, but not limited to, a delay due to a natural or man-made disaster, the pending adjudication of a lawsuit, a building construction problem, and a contested or delayed insurance claim or settlement.

Any permit remaining on inactive status for a period of more than twelve (12) months or which has not been granted an extension under the provision of this Rule shall expire pursuant to written notice given to permit holders by this agency or to the provisions of ACA § 3-4-201 as they apply. Any permitted outlet which has been on inactive status in excess of six (6) months shall be re-inspected by the Alcoholic Beverage Control Enforcement Division to determine if the outlet is in compliance with required health and safety rules and the outlet is open for business and prepared to sell or dispense alcoholic beverages before the permit(s) may be returned to active status. As part of the re-inspection process, the Alcoholic Beverage Control Enforcement Division shall give notice of the request to return to active status to the law enforcement officer who has primary jurisdiction over the site of the permitted outlet. The date the business activity will resume must be before or on the following day after the expiration of the last day of the inactive status period and includes the resumption of business at the permitted location that means the outlet is open for business and prepared to sell or dispense alcoholic beverages or such permit shall expire. (Amended 1-22-20)

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1590

By: Representative House
By: Senator K. Ingram

For An Act To Be Entitled

AN ACT TO AMEND TITLE 3 OF THE ARKANSAS CODE
REGARDING PERMITS FOR ALCOHOLIC BEVERAGE BUSINESSES;
TO AMEND THE POPULATION RATIO FOR PERMITS TO SELL
ALCOHOLIC BEVERAGES OFF-PREMISES; TO SHORTEN THE TIME
PERIOD A PERMIT IS ON INACTIVE STATUS; AND FOR OTHER
PURPOSES.

Subtitle

TO AMEND TITLE 3 OF THE ARKANSAS CODE
REGARDING PERMITS FOR ALCOHOLIC BEVERAGE
BUSINESSES; TO AMEND THE POPULATION RATIO
FOR PERMITS TO SELL OFF-PREMISES; AND TO
SHORTEN THE TIME PERIOD A PERMIT IS ON
INACTIVE STATUS.

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

SECTION 1. Arkansas Code § 3-4-201 is amended to read as follows:
3-4-201. Number of permits restricted.

(a) 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) 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~~ the board issues.

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



1 restricted.

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

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

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

17 (B) Population of the county or political subdivision of
18 the county shall:

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

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

24 ~~(2)(3)~~ A new permit that is issued in a county or political
25 subdivision of the county following the most recent federal decennial census
26 shall be issued under the following restrictions:

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

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

32 (ii) Qualifications are to be set by the board and
33 ~~its~~ the board's determination of the public convenience and advantage;

34 ~~(3)(A)(4)(A)~~ If it is determined that a county or political
35 subdivision of the county is entitled to additional permits when warranted by
36 the most recent federal decennial census, the board ~~will~~ shall announce

1 before the last date for applications the number of new permits, if any,
 2 ~~which~~ that may be issued in the county or political subdivision of the
 3 county.

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

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

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

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

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

18 (D) If a holder of a permit for the sale of vinous (except
 19 small farm wines), spirituous, or malt liquor surrenders the permit in a
 20 county or political subdivision of the county where the ratio no longer meets
 21 the ~~one to five thousand population~~ requirement of one (1) permit for every
 22 seven thousand five hundred (7,500) population, new applications ~~will~~ shall
 23 not be accepted until that ratio is reestablished at a subsequent federal
 24 decennial census;

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

29 (ii) The permit may remain inactive for ~~six (6)~~
 30 three (3) months ~~or until the permit holder notifies the director that he or~~
 31 ~~she is ready to resume business, whichever is longer.~~

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

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

36 (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~~ three-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" means ~~are those~~ delays in return to business ~~which~~ that are beyond the control, planning, or foresight of the permit holder, including without limitation, ~~a~~:

(1) ~~Delay~~ A delay due to a natural or man-made disaster;

(2) ~~Pending court action~~ The pending adjudication of a lawsuit;

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

(4) ~~Contested~~ A contested or delayed insurance claim or settlement.

(D) A permit remaining on inactive status for a period of more than ~~eighteen (18)~~ twelve (12) months or which has not been granted an extension under this subdivision ~~(e)(4)~~ (c)(5) shall expire; and

~~(5)-(A)(6)(A)~~ This section and §§ 3-4-202 and 3-4-208, except with regard to a permit on inactive status for more than ~~eighteen (18)~~ twelve (12) months after the provisions of subdivision ~~(e)(4)~~ (c)(5) of this section have become effective or ~~which a permit that~~ has expired in accordance with subdivision ~~(e)(4)~~ (c)(5) of this section, do not divest any permit holder holding the permit on ~~July 1, 1991~~ September 1, 2019, regardless of the quota ratio, of his or her permit.

1 (B) In a county or political subdivision of the county
2 ~~which~~ that has a ratio lower than the permit quota ratio of ~~one to five~~
3 ~~thousand population one~~ (1) permit for every seven thousand five hundred
4 (7,500) population, the permit holder shall be allowed to continue under
5 subdivision ~~(e)(3)(B)~~ (c)(4)(B) of this section.

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

9
10 SECTION 2. Arkansas Code § 3-4-221 is amended to read as follows:

11 3-4-221. Transfer of permitted location.

12 The Alcoholic Beverage Control Board shall not authorize the transfer
13 of a permit to dispense vinous (except small farm wines), spirituous, or malt
14 liquor from ~~a~~ one location to another location within a city or town located
15 within a county having a population of two hundred thousand (200,000) or more
16 persons, according to the most recent federal decennial census, if the
17 transfer of ~~such~~ the permit to a location in the city or town will result in
18 there being more than one (1) permitted location in the city or town for ~~each~~
19 ~~every five thousand (5,000)~~ seven thousand five hundred (7,500) population in
20 the city or town, according to the most recent federal decennial census.

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23 **APPROVED: 3/27/19**
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