

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Senator Dowd

A Bill

SENATE BILL 497

For An Act To Be Entitled

8 "AN ACT TO BE KNOWN AS THE NONRESIDENT BEER SELLER_S
9 PERMIT ACT OF 1995_ RELATING TO ALCOHOLIC BEVERAGES; TO
10 AUTHORIZE THE ISSUANCE OF PERMITS TO NONRESIDENT
11 MANUFACTURERS, SUPPLIERS, BREWERS AND IMPORTERS OF BEER BY
12 THE ALCOHOLIC BEVERAGE DIVISION; TO ESTABLISH A PROCEDURE
13 FOR THE ISSUANCE OF SUCH PERMITS; TO PROHIBIT THE
14 IMPORTATION OR SALE OF ANY BEER OR MALT LIQUOR FROM ANY
15 SOURCE NOT POSSESSED OF A PERMIT; TO AMEND ARKANSAS CODE
16 3-2-205(b) TO CONFORM WITH THIS ACT; AND FOR OTHER
17 PURPOSES."

Subtitle

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19
20 "NONRESIDENT BEER SELLER_S PERMIT ACT
21 OF 1995_."

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

24
25 SECTION 1. Short Title.

26 This act shall be known as the "Nonresident Beer Seller_s Permit Act of
27 1995."

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29 SECTION 2. Definitions.

30 (a) "Beer" shall have the meaning set forth in §3-5-202(3).

31 (b) "Brewer" shall have the meaning set forth in §3-5-202(5).

32 (c) "Division" shall mean the Alcoholic Beverage Control Division of
33 the State of Arkansas.

34 (d) "Malt Liquor" shall have the meaning set forth in §3-1-
35 102(a)(3)(A).

- 1 (e) "Manufacturer" shall have the meaning set forth in §3-1-102(a)(4).
- 2 (f) "Supplier" shall have the meaning set forth in §3-5-1102(a)(10).
- 3 (g) "Wholesaler" shall have the meaning set forth in §3-5-202(10).

4

5 SECTION 3. When permit required.

6 A nonresident seller_s permit is required of any manufacturer, brewer,
7 supplier, or other such person, which sells or distributes beer or malt
8 liquor, to any wholesale dealer and distributor, regardless of whether the
9 sale is consummated inside or outside this state.

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11 SECTION 4. Authorized transactions.

12 The holder of a nonresident seller_s permit is authorized to:

- 13 (1) Solicit and take orders for beer or malt liquor from a wholesaler
14 dealer and distributor; and
- 15 (2) Ship or cause to be shipped into this state beer or malt liquor in
16 consummation of a sale made to a wholesaler dealer or distributor.

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18 SECTION 5. Prohibited actions.

19 No holder of a nonresident seller_s permit, nor any officer, director,
20 agent, or employee of the holder, nor any affiliate of the holder, regardless
21 of whether the affiliation is corporate or by management, direction, or
22 control, may do any of the following:

- 23 (1) Fail to make or file a report with the division as required by
24 rules of the division;
- 25 (2) Advertise any beer or malt liquor contrary to the laws of this
26 state or to the rules of the division, or sell beer or malt liquor for resale
27 in this state in violation of advertising or labeling rules of the division;
- 28 (3) Sell beer or malt liquor for resale inside this state or cause it
29 to be brought into this state in a size of container prohibited by this act
30 or by rule of the division;
- 31 (4) Solicit or take orders for beer or malt liquor from a person not
32 authorized to import beer or malt liquor into this state for the purpose of
33 resale;
- 34 (5) Induce, persuade, or influence, or attempt to induce, persuade or
35 influence, a person to violate this act or a rule of the division, or

1 conspire with a person to violate this act or rule of the division;

2 (6) Exercise a privilege granted by a nonresident seller_s permit
3 while an order or suspension against the permit is in effect;

4 (7) Take or fail to take any action that would cause any type of
5 fixing of wholesale or retail prices in the state. Suggestion of wholesale
6 or retail prices will not be considered to be a violation of this provision;

7 (8) Any other act by a supplier in violation of Arkansas Code 3-5-
8 1107;

9 (9) Hold any wholesaler_s permit under Arkansas Code 3-5-202(10); or

10 (10) Any other act that violates any regulation adopted by the
11 division.

12

13 SECTION 6. Application for permit.

14 (a) Any manufacturer, importer or other person desiring to obtain a
15 nonresident seller_s permit may make application for such to the division on
16 forms provided by the division.

17 (b) In addition, every applicant shall pay to the division an annual
18 permit fee which is established at one hundred dollars (\$100.00) if such
19 applicant shall have shipped, sold or otherwise distributed fewer than two
20 hundred (200) barrels, as defined for excise tax purposes under the Arkansas
21 Code, of any beer or malt liquor in this state in the year immediately
22 preceding application. If such applicant shall have shipped, sold or
23 otherwise distributed in this state from two hundred (200) to one thousand
24 (1,000) barrels in the year immediately preceding application, such applicant
25 shall pay an annual permit fee of five hundred dollars (\$500). If such
26 applicant shall have shipped, sold or otherwise distributed in this state
27 more than one thousand barrels (1,000) in the year immediately preceding
28 application, such applicant shall pay an annual permit fee of one thousand
29 dollars (\$1,000).

30 (c) Each permit shall be valid for one (1) fiscal year which shall run
31 from the first day of July to the last day of June. Any applicant receiving
32 a permit during the course of any fiscal year shall not be relieved of the
33 obligation to pay the full amount of the annual permit fee. As long as a
34 permit has not been revoked, it shall be renewable for successive years upon
35 the payment of the appropriate annual permit fee. Each holder of a permit

1 shall pay the permit fee based on the immediate previous calendar year_s
2 shipments into the state.

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4 SECTION 7. Wholesalers to import from nonresident seller permittees
5 only.

6 No wholesaler licensed under Arkansas Code 3-5-206 may purchase or
7 order any malt beverage for importation into the state from any source other
8 than one possessed of a nonresident seller_s permit. No such wholesaler may
9 purchase or order any beer or malt liquor for importation into this state
10 from any permittee whose permit has been revoked or suspended after such
11 wholesaler has received notice of the revocation or suspension.

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13 SECTION 8. Nonresident seller to be primary American source of supply.

14 (a) No holder of a nonresident seller_s permit may solicit, accept, or
15 fill an order for beer or malt liquor, from a holder of any type of
16 wholesaler_s permit unless the nonresident seller is the primary American
17 source of supply for the brand of beer or malt liquor which is ordered.

18 (b) In this section, "primary American source of supply" shall mean
19 the producer, the owner of the commodity at the time it becomes a marketable
20 product, the bottler or the exclusive agent of any of those. To be the
21 "primary American source of supply" the nonresident seller must be the first
22 source, that is the closest source to the manufacturer, in the channel of
23 commerce from whom the product can be secured by persons conducting business
24 in Arkansas.

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26 SECTION 9. Investigation of permittees.

27 (a) If a representative of the division or the Department of Revenue
28 wishes to examine the book accounts, records, minutes, letters, memoranda,
29 documents, checks, telegrams, constitution and bylaws, or other records of a
30 nonresident seller_s permittee, he shall make a written request to the
31 permittee or his duly authorized manager or representative or, if the
32 permittee is a corporation, to any officer of the corporation.

33 (b) When a request for an examination is made, the person to whom it
34 is directed shall immediately allow the representative to conduct the
35 examination.

1 (c) The representative may investigate the organization, conduct and
2 management of any nonresident seller_s permittee and may make copies of any
3 records which in the judgment of the representative may show or tend to show
4 that the permittee has violated the law, regulation or the terms of his
5 permit.

6 (d) A representative may not make public any information obtained
7 under this section except to a law enforcement officer of this state or in
8 connection with an administrative or judicial proceeding in which the state
9 or division is a party concerning the cancellation or suspension of a
10 nonresident seller_s permit, the collection of taxes due under state law, or
11 the violation of state law.

12 (e) The division may revoke or suspend a nonresident seller_s permit
13 in accordance with this title if the permittee or his authorized
14 representative fails or refuses to permit an examination authorized by this
15 section, or to permit the making of copies of any documents as provided by
16 this section, without regard to whether the document is inside or outside the
17 state, or if the permittee or his authorized representative fails or refuses
18 to answer a question of an officer incident to an examination or
19 investigation in progress.

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21 SECTION 10. Administrative sanctions.

22 (a) The director and the board are empowered to administer the full
23 range of penalties available for other administrative proceedings before it,
24 including but not limited to, fines, suspension, cancellation, or revocation
25 of such permits which have been found to be in violation of the provisions of
26 this act.

27 (b) Any violation of this act shall be classified as a Class A
28 violation pursuant to the terms of Arkansas Code 3-4-402.

29

30 SECTION 11. Arkansas Code 3-2-205(b) is amended to read as follows:

31 "(b) The Alcoholic Beverage Control Division shall have the following
32 powers, functions, and duties:

33 (1) To fix by rule the standards of manufacturing, rectifying, and
34 blending in order to insure the use of proper ingredients and methods in the
35 manufacturing, rectifying, and blending of vinous, spirituous, or malt

1 liquors to be sold in the state;

2 (2) To adopt rules and regulations for the supervision and control of
3 the manufacture and sale of vinous (except wines), spirituous, or malt
4 liquors throughout the state not inconsistent with law;

5 (3) To prescribe forms of applications for permits under this act and
6 of all periodic reports deemed necessary to be made by any permittee;

7 (4) To fix the hours during which vinous, spirituous, or malt liquors
8 may be sold or dispensed at retail, as provided by this act;

9 (5) To keep records in proper form to be prescribed by the Director of
10 the Alcoholic Beverage Control Division and the Director of the Department of
11 Finance and Administration of all permits issued and all permits revoked
12 under the provisions of this act and to keep records in such form so as to
13 provide ready information as to the identity of all permits including the
14 names of stockholders and directors of corporations holding permits, and also
15 the location of all permitted premises.

16 (6) To adopt rules and regulations for the supervision and control of
17 nonresident beer seller_s permit."

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19 SECTION 12. All provisions of this act of a general and permanent
20 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
21 Code Revision Commission shall incorporate the same in the Code.

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23 SECTION 13. If any provision of this act or the application thereof to
24 any person or circumstance is held invalid, such invalidity shall not affect
25 other provisions or applications of the act which can be given effect without
26 the invalid provision or application, and to this end the provisions of this
27 act are declared to be severable.

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29 SECTION 14. All laws and parts of laws in conflict with this act are
30 hereby repealed.

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32 SECTION 15. Effective date. This act shall be effective July 1, 1995.

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34 SECTION 16. EMERGENCY. It is hereby found and determined by the
35 General Assembly that present law does not adequately protect the people of

1 the State of Arkansas from unscrupulous activities of nonresident
2 manufacturers, suppliers, brewers and importers of beer; that the present law
3 does not contain procedures for registration of nonresident manufacturers,
4 suppliers, brewers and importers of beer, nor enforcement of current laws
5 against such groups; and that the present law does not empower the Alcoholic
6 Beverage Division to effectively monitor the activities of manufacturers,
7 suppliers, brewers and importers of beer. Therefore, an emergency is hereby
8 declared to exist and this act being necessary for the preservation of the
9 public peace, health and safety shall be in full force and effect from and
10 after July 1, 1995.

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