

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999

# A Bill

SENATE BILL 77

4  
5 By: Senator Bradford  
6 By: Representative Pappas

## For An Act To Be Entitled

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10 "AN ACT TO AMEND THE NONRESIDENT BEER SELLER'S PERMIT  
11 ACT OF 1995; AND FOR OTHER PURPOSES."

## Subtitle

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13  
14 "TO AMEND THE NONRESIDENT BEER SELLER'S  
15 PERMIT ACT OF 1995."

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

18  
19 SECTION 1. Arkansas Code 3-5-1302 is amended by inserting an additional  
20 subsection at the end thereof to read as follows:

21 "(h) 'Wholesaler support center' means a facility located within a  
22 wholesaler's premises at which beer and malt liquor is stored by a  
23 manufacturer for resale to wholesalers or distributors within or without the  
24 state."

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26 SECTION 2. Arkansas Code 3-5-1303 is amended to read as follows:

27 "3-5-1303. When permit required.

28 A nonresident seller's permit is required of any manufacturer, brewery,  
29 supplier, or other such person, who sells or distributes beer or malt to any  
30 wholesale dealer and distributor, regardless of whether the sale is  
31 consummated inside or outside this state. The holder of a nonresident  
32 seller's permit may also apply for and receive a wholesaler support center  
33 permit. An applicant for a wholesaler support center permit must also be the  
34 holder of a nonresident seller's permit."

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36 SECTION 3. Arkansas Code 3-5-1304 is amended to read as follows:

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1 "3-5-1304. Authorized transactions.

2 (a) The holder of a nonresident seller's permit is authorized to:

3 (1) Solicit and take orders for beer or malt liquor from a  
4 wholesale dealer and distributor; and

5 (2) Ship or cause to be shipped into this state beer or malt in  
6 consummation of a sale made to a wholesale dealer or distributor.

7 (b) Any other provisions of this title notwithstanding, the holder of a  
8 wholesaler support center permit is also authorized to:

9 (1) Solicit and take orders for beer or malt liquor from a  
10 wholesaler dealer and distributor;

11 (2) Ship or cause to be shipped into this state to the premises  
12 of the wholesaler support center non-tax paid beer or malt liquor for storage  
13 and resale to a wholesale dealer or distributor within or without this state;

14 (3) Fill orders for beer or malt liquor from in-state wholesale  
15 dealers or distributors provided the receiving in-state wholesaler or  
16 distributor pays all applicable state taxes in the same manner as would apply  
17 had the wholesaler purchased from an out-of-state non-resident seller permit  
18 holder;

19 (4) Pay to or compensate a wholesaler or distributor for rented  
20 or leased space within the wholesaler's premises for the storage of beer or  
21 malt liquor within the confines of the wholesaler support center; and

22 (5) Compensate a wholesaler or distributor for loading, unloading  
23 and handling of beer or malt liquor and for administrative and other expenses  
24 associated with operating the wholesaler support center on the wholesaler's  
25 premises."

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27 SECTION 4. Arkansas Code 3-5-1305 is amended to read as follows:

28 "3-5-1305. Prohibited actions.

29 No holder of a nonresident seller's permit or wholesaler support center  
30 permit, nor any officer, director, agent, or employee of the holder, nor any  
31 affiliate of the holder, regardless of whether the affiliation is corporate or  
32 by management, direction, or control, may do any of the following:

33 (1) Fail to make or file a report with the division as required by rules  
34 of the division;

35 (2) Advertise any beer or malt contrary to the laws of this state or to  
36 the rules of the division, or sell beer or malt for resale in this state in

1 violation of advertising or labeling rules of the division;

2 (3) Sell beer or malt for resale inside this state or cause it to be  
3 brought into this state in a size of container prohibited by this subchapter  
4 or by rule of the division;

5 (4) Solicit or take orders for beer or malt from a person not authorized  
6 to import beer or malt into this state for the purpose of resale; provided  
7 however, a nonresident beer seller permittee also holding a wholesaler support  
8 center permit may engage in those activities set forth in §3-5-1304(b);

9 (5) Induce, persuade, or influence, or attempt to induce, persuade, or  
10 influence, a person to violate this subchapter or a rule of the division, or  
11 conspire with a person to violate this subchapter or rule of the division;

12 (6) Exercise a privilege granted by a nonresident seller's permit while  
13 an order or suspension against the permit is in effect;

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

17 (8) Any other act by a supplier in violation of § 3-5-1107;

18 (9) Hold any wholesaler's permit under § 3-5-206; or

19 (10) Any other act that violates any regulation adopted by the  
20 division."

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22 SECTION 5. Arkansas Code 3-5-1306 is amended to read as follows:

23 "3-5-1306. Application for permit.

24 (a) Any manufacturer, importer, or other person desiring to obtain a  
25 nonresident seller's permit or wholesaler support center permit may make  
26 application for such to the division on forms provided by the division.

27 (b)(1) In addition, every applicant for a nonresident seller's permit  
28 shall pay to the division an annual permit fee which is established at one  
29 hundred dollars (\$100) if such applicant shall have shipped, sold, or  
30 otherwise distributed fewer than two hundred (200) barrels, as defined for  
31 excise tax purposes under this Code, of any beer or malt in this state in the  
32 year immediately preceding application.

33 (2) If such applicant shall have shipped, sold, or otherwise  
34 distributed in this state from two hundred (200) to one thousand (1,000)  
35 barrels in the year immediately preceding application, such applicant shall  
36 pay an annual permit fee of five hundred dollars (\$500).

1 (3) If such applicant shall have shipped, sold, or otherwise  
 2 distributed in this state more than one thousand (1000) barrels in the year  
 3 immediately preceding application, such applicant shall pay an annual permit  
 4 fee of one thousand dollars (\$1,000).

5 (c)(1) Each permit shall be valid for one (1) fiscal year which shall  
 6 run from the first day of July to the last day of June.

7 (A) Any applicant receiving a permit during the course of any  
 8 fiscal year shall not be relieved of the obligation to pay the full amount of  
 9 the annual permit fee.

10 (B) As long as a permit has not been revoked or cancelled, it  
 11 shall be renewable for successive years upon the payment of the appropriate  
 12 annual permit fee on or before June 30 of each calendar year. Any person not  
 13 renewing the permits described above on or before June 30 shall be subject to  
 14 the penalties and provisions provided for in § 3-4-216.

15 (2) Each holder of a permit shall pay the permit fee based on the  
 16 immediate previous calendar year's shipments into the state.

17 (d) An applicant for a wholesaler support center permit shall pay an  
 18 annual permit fee of one thousand dollars (\$1,000)."

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 20 SECTION 6. Arkansas Code 3-5-1308 is amended to read as follows:

21 3-5-1308. Nonresident seller to be primary American source of supply.

22 (a) No holder of a nonresident seller's permit or wholesaler support  
 23 center permit may solicit, accept, or fill an order for beer or malt from a  
 24 holder of any type of wholesaler's permit unless the nonresident seller or  
 25 wholesaler support center permittee is the primary American source of supply  
 26 for the brand of beer or malt which is ordered.

27 (b)(1) In this section, 'primary American source of supply' shall mean:

28 (A)(i) The producer;

29 (ii) The owner of the commodity at the time it becomes a marketable  
 30 product; or

31 (iii) The bottler; or

32 (B) The exclusive agent of any of those.

33 (2) To be the 'primary American source of supply', the nonresident seller  
 34 or wholesaler support center permittee must be the first source, that is, the  
 35 closest source to the manufacturer, in the channel of commerce from whom the  
 36 product can be secured by persons conducting business in Arkansas."

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2 SECTION 7. Arkansas Code 3-5-1309 is amended to read as follows:

3 "3-5-1309. Investigation of permittees.

4 (a) If a representative of the Alcoholic Beverage Control Division or  
5 the Revenue Division of the Department of Finance and Administration wishes to  
6 examine the book accounts, records, minutes, letters, memoranda, documents,  
7 checks, telegrams, constitution and bylaws, or other records of a nonresident  
8 seller's permittee or wholesaler support center permittee, he shall make a  
9 written request to the permittee or his duly authorized manager or  
10 representative or, if the permittee is a corporation, to any officer of the  
11 corporation.

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

15 (c) The representative may investigate the organization, conduct, and  
16 management of any nonresident seller's permittee or wholesaler support center  
17 permittee, and may make copies of any records which in the judgment of the  
18 representative may show or tend to show that the permittee has violated the  
19 law, regulation, or the terms of his permit.

20 (d) A representative may not make public any information obtained under  
21 this section except to a law enforcement officer of this state or in  
22 connection with an administrative or judicial proceeding in which the state or  
23 division is a party concerning the cancellation or suspension of a nonresident  
24 seller's permit or wholesaler support center permit, the collection of taxes  
25 due under state law, or the violation of state law.

26 (e) The division may revoke or suspend a nonresident seller's permit or  
27 wholesaler support center permit in accordance with this title if the  
28 permittee or his authorized representative fails or refuses to permit an  
29 examination authorized by this section, or to permit the making of copies of  
30 any documents as provided by this section, without regard to whether the  
31 document is inside or outside the state, or if the permittee or his authorized  
32 representative fails or refuses to answer a question of an officer incident to  
33 an examination or investigation in progress."  
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35 SECTION 8. All provisions of this Act of a general and permanent nature  
36 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code

1 Revision Commission shall incorporate the same in the Code.

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3 SECTION 9. If any provision of this Act or the application thereof to  
4 any person or circumstance is held invalid, such invalidity shall not affect  
5 other provisions or applications of the Act which can be given effect without  
6 the invalid provision or application, and to this end the provisions of this  
7 Act are declared to be severable.

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9 SECTION 10. All laws and parts of laws in conflict with this Act are  
10 hereby repealed.

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12 SECTION 11. EMERGENCY CLAUSE. It is hereby found and determined by the  
13 Eighty-second General Assembly that economic development and the creation of  
14 additional jobs for citizens of Arkansas preserves the public peace, health  
15 and safety of the State; that the establishment of wholesaler support centers  
16 in the State will create additional jobs that would go to other states that  
17 are competing for the establishment of such centers, thereby creating the need  
18 for our state's business entities to be able to compete for such centers  
19 immediately. Therefore, an emergency is declared to exist and this act being  
20 immediately necessary for the preservation of the public peace, health and  
21 safety shall become effective on the date of its approval by the Governor. If  
22 the bill is neither approved nor vetoed by the Governor, it shall become  
23 effective on the expiration of the period of time during which the Governor  
24 may veto the bill. If the bill is vetoed by the Governor and the veto is  
25 overridden, it shall become effective on the date the last house overrides the  
26 veto.