

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: H3/14/17

A Bill

HOUSE BILL 2153

5 By: Representative Penzo
6

For An Act To Be Entitled

8 AN ACT TO AMEND TITLE 3 OF THE ARKANSAS CODE
9 REGARDING PERMITS FOR ALCOHOLIC BEVERAGE BUSINESSES;
10 AND FOR OTHER PURPOSES.
11

Subtitle

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13
14 TO AMEND TITLE 3 OF THE ARKANSAS CODE
15 REGARDING PERMITS FOR ALCOHOLIC BEVERAGE
16 BUSINESSES.
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

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

23 *3-3-104. Prohibition on services offered to a grocery store wine*
24 *permittee.*

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

33 *(b) This section does not prevent a wholesaler licensed under this*
34 *title from unloading wine at a grocery store wine location at the location's*
35 *customary loading dock.*
36



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

2 3-4-201. Number of permits restricted.

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

6 (1) Delay due to a natural disaster;

7 (2) Pending court action;

8 (3) Building construction problem; and

9 (4) Contested insurance claim.

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

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

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

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

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

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

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

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

36 (ii) Count all residents of the state, county or

1 political subdivision of the county, including without limitation the
2 residents of a dry political subdivision of a county; ~~and~~

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

6 (A) Additional permits may be issued on a ratio of one (1)
7 for every additional ~~five thousand (5,000)~~ seven thousand five hundred
8 (7,500) population within the county or political subdivision of the county;

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

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

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

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

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

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

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

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

31 ~~(D)~~(C) If a holder of a permit for the sale of vinous
32 (except small farm wines), spirituous, or malt liquor surrenders the permit
33 in a county or political subdivision of the county where the ratio no longer
34 meets the ~~one-to-five-thousand-population~~ one-to-seven-thousand-five-hundred-
35 population requirement, new applications will not be accepted until that
36 ratio is reestablished at a subsequent federal decennial census;

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

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

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

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

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

14 (iii) The date business activity will resume.

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

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

19 (a) Business circumstances exist to justify an
20 extension;

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

23 (c) The inactive status should be extended.

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

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

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

32 ~~(2) Pending court action;~~

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

34 ~~(4) Contested insurance claim.~~

35 (D) A permit remaining on inactive status for a period of
36 more than eighteen (18) months or which has not been granted an extension

1 under this subdivision shall expire; and

2 ~~(5)(A)(6)(A)~~ This section and §§ 3-4-202 and 3-4-208, except a
3 permit on inactive status for more than eighteen (18) months after the
4 provisions of subdivision (c)(4) of this section become effective or which
5 has expired in accordance with subdivision (c)(4) of this section, do not
6 divest any permit holder holding the permit on ~~July 1, 1991~~ September 1,
7 2017, regardless of the quota ratio, of his or her permit.

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

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

15
16 SECTION 3. Arkansas Code Title 3, Chapter 4, is amended to add an
17 additional subchapter to read as follows:

18 Subchapter 11 – Pool Buying

19
20 3-4-1101- Definitions.

21 As used in this subchapter:

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

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

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

30
31 3-4-1102. Pool buying agent Licensure.

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

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

36 (c) The Alcoholic Beverage Control Board shall adopt rules to create a

1 pool buying agent license.

2
3 3-4-1103. Pool buying agreements.

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

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

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

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

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

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

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

19
20 3-4-1104 . Pool buying groups operations.

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

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

27 (c) A member of a pool buying group is not eligible to place an order
28 with the pool buying group until the member has executed the pool buying
29 agreement and the licensee's name, business name, license number and date of
30 membership have been filed with and approved by the Alcoholic Beverage
31 Control Division.

32
33 3-4-1105. Procedures for pool buying group orders.

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

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

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

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

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

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

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

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

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

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

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

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

28
29 3-4-1106. Recordkeeping.

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

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

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

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

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

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

7 (B) The names and license or permit numbers of each member
8 of a pool buying group participating in the pool buying group order;

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

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

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

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

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

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

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

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

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

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

34
35 /s/Penzo
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