

1 State of Arkansas *As Engrossed: H3/14/17 H3/23/17*

2 91st General Assembly

# A Bill

3 Regular Session, 2017

HOUSE BILL 2153

4

5 By: Representatives Penzo, G. McGill

6 By: Senator J. Hutchinson

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## For An Act To Be Entitled

9

AN ACT TO AMEND TITLE 3 OF THE ARKANSAS CODE

10

REGARDING PERMITS FOR ALCOHOLIC BEVERAGE BUSINESSES;

11

AND FOR OTHER PURPOSES.

12

13

14

## Subtitle

15

TO AMEND TITLE 3 OF THE ARKANSAS CODE

16

REGARDING PERMITS FOR ALCOHOLIC BEVERAGE

17

BUSINESSES.

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

21

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

23 *3-4-201. Number of permits restricted.*

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

27 *(1) Delay due to a natural disaster;*

28 *(2) Pending court action;*

29 *(3) Building construction problem; and*

30 *(4) Contested insurance claim.*

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

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



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

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

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

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 state, county, or political  
18 subdivision of the county shall:

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

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

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

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

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

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

33           ~~(3)(A)~~(4)(A) If it is determined that a county or political  
34 subdivision of the county is entitled to additional permits when warranted by  
35 the most recent federal decennial census, the board ~~will~~ shall announce  
36 before the last date for applications the number of new permits, if any,

1 ~~which~~ that may be issued in the county or political subdivision of the  
2 county.

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

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

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

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

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

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

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

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

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

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

34 (ii) The reason for the suspension of business  
35 activities; and

36 (iii) The date business activity will resume.

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

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

5 (a) Business circumstances exist to justify an  
6 extension;

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

9 (c) The inactive status should be extended.

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

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

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

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

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

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

21 (D) A permit remaining on inactive status for a period of  
22 more than eighteen (18) months or which has not been granted an extension  
23 under this subdivision (d)(5) shall expire; and

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

30 (B) In a county or political subdivision of the county  
31 which has a ratio lower than the permit quota ratio of ~~one to five thousand~~  
32 population one-to-seven thousand-five-hundred-population, the permit holder  
33 shall be allowed to continue under subdivision ~~(e)(3)(B)~~ (d)(4)(B) of this  
34 section.

35 ~~(d) This section shall apply only to applications for permits to~~  
36 ~~dispense vinous (except small farm wines), spirituous, or malt liquor filed~~

1 ~~with the board after July 1, 1991.~~

2  
3 SECTION 2. Arkansas Code § 3-4-404 is amended to read as follows:

4 3-4-404. Class B violations.

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

6 (1) Pledge, hypothecation, or use of a permit as collateral;

7 (2) Defacing, destroying, or altering a permit;

8 (3) Transporting controlled beverages in violation of  
9 regulations or law;

10 (4) Manufacturing, selling, offering, dispensing, or giving  
11 away, possessing, or transporting controlled beverages upon which tax is not  
12 paid;

13 (5) Failure to maintain proper records by a manufacturer;

14 (6) Failure by a wholesaler to maintain proper records;

15 (7) Failure by a wholesaler to register new brands;

16 (8)(A) Giving samples without authorization.

17 (B) Assisting a licensee or permittee under this title is  
18 not a gift to the licensee or permittee or an affiliate of the licensee or  
19 permittee under this subdivision (8).

20 (C) A rewards program offered by a retail liquor permittee  
21 to a retail customer who frequently makes purchases is not a gift under this  
22 subdivision (8);

23 (9)(A) Sales, including sales from a wholesaler to a retailer  
24 for anything other than cash, ~~or~~ check, debit card, or credit card.

25 (B)(i) A wholesaler's invoice to a retailer shall reflect  
26 separately any credit card surcharge added.

27 (ii) The amount of a surcharge on an invoice under  
28 subdivision (9)(B)(i) of this section shall not exceed the amount charged to  
29 the wholesaler by the credit card processor;

30 (10) Delivery without an invoice by a wholesaler;

31 (11) Selling to the insane;

32 (12) Selling to bootleggers;

33 (13) Accepting food stamps in payment for controlled beverages;

34 (14) Unlawful manufacture or sale in a dry area; and

35 (15) Sale of controlled beverages by vending machine.

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