

1 State of Arkansas As Engrossed: H3/14/17 H3/23/17 H3/29/17

2 91st General Assembly

A Bill

3 Regular Session, 2017

HOUSE BILL 2197

4

5 By: Representative Penzo

6 By: Senator J. Hutchinson

7

8

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW REGARDING THE OPERATIONS OF
10 RETAIL LIQUOR STORES AND LIQUOR DISTRIBUTORS; AND FOR
11 OTHER PURPOSES.

12

13

14

Subtitle

15 TO AMEND THE LAW REGARDING THE OPERATIONS
16 OF RETAIL LIQUOR STORES AND LIQUOR
17 DISTRIBUTORS.

18

19

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

21

22 *SECTION 1. Arkansas Code Title 3, Chapter 4, is amended to add*
23 *additional subchapters to read as follows:*

24 *Subchapter 11 – Pool Buying*

25

26 *3-4-1101- Definitions.*

27 *As used in this subchapter:*

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

30 *(2) "Pool buying" means the combining of orders into a single*
31 *transaction, by two (2) but no more than ten (10) retail liquor permittees,*
32 *who are members of a cooperative or pool buying group for maximizing*
33 *purchasing power and approved by the division; and*

34 *(3) "Pool buying agent" means a vendor designated by a pool*
35 *buying group in a pool buying agreement.*

36



1 3-4-1102. Pool buying agent Licensure.

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

3 (b) A license under this section shall authorize a pool buying agent
4 to purchase the types of alcoholic beverages that the agent orders on behalf
5 of the members of a pool buying group.

6 (c) The Alcoholic Beverage Control Board shall adopt rules to create a
7 pool buying agent license.

8
9 3-4-1103. Pool buying agreements.

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

13 (2) The division shall review the agreement and if the
14 requirements of applicable law and the rules are met, shall approve the
15 agreement.

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

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

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

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

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

25
26 3-4-1104. Pool buying group operations.

27 (a) A pool buying group may hire employees to act in an administrative
28 or management capacity for the members of a pool buying group's purchase of
29 alcoholic beverages.

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

33 (c) A member of a pool buying group is not eligible to place an order
34 with the pool buying group until the member has executed the pool buying
35 agreement and the licensee's name, business name, license number and date of
36 membership have been filed with and approved by the Alcoholic Beverage

1 Control Division.

2
3 3-4-1105. Procedures for pool buying group orders.

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

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

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

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

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

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

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

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

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

28 (4) Each wholesaler shall deliver each licensee's or permittee's
29 part of the pool buying group order to the licensee's or permittee's place of
30 business.

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

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

36

1 3-4-1106. Recordkeeping.

2 (a) A distributor shall prepare and keep a master invoice that
3 identifies:

4 (1) The total pool buying group order placed by the pool buying
5 agent; and

6 (2) Each pool buying group order member's portion of the total
7 pool buying group order by setting forth the name of the pool buying agent
8 making the order.

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

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

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

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

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

19 (D) The cost to each member of the pool buying group for
20 his or her share of the pool buying group order and any vinous and spirituous
21 beverage discount given on the pool buying group order.

22 (c)(1) Sale of alcoholic beverages ordered as part of a single pool
23 buying group order from a permit holder who received the products is a
24 purchase between members of a pool buying group, if a record of the
25 transaction is made by the member of the pool buying group member
26 transferring the products to another member of a pool buying group and
27 retained by both pool buying group members for a period of three (3) years
28 after the date of transfer.

29 (2) A record created under subdivision (c)(1) of this section
30 shall include without limitation the:

31 (A) Business name and license or permit number of each
32 license or permit holder;

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

34 (C) Date of original delivery of products from the pool
35 buying group order;

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

1 (E) Unique identifier that links the record with the pool
2 buying group order.

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

7
8 Subchapter 12 – Delivery Service License

9
10 3-4-1201. Delivery service license – Creation.

11 (a) Effective September 1, 2017, there is created a delivery service
12 license to be issued by the Alcoholic Beverage Control Board to a delivery
13 service that:

14 (1) Delivers prepared food from restaurants to customers as part
15 of the delivery service's business; and

16 (2) Seeks to deliver sealed packages of alcoholic beverages or
17 beer or both sold by a retailer licensed under this title.

18 (b)(1)(A) A person, partnership, limited liability company, or
19 corporation desiring to deliver sealed packages of alcoholic beverages or
20 beer sold by a retailer licensed under this title as part of the delivery
21 service shall apply to the board for a delivery service license.

22 (B) The application shall be in writing and verified on
23 forms authorized by the board.

24 (2)(A) A person applying for a delivery service license shall be
25 twenty-one (21) years of age or older and shall not have been convicted of a
26 felony.

27 (B) The board may issue a delivery service license to an
28 individual, partnership, limited liability company, or corporation that is
29 registered to do business in the State of Arkansas regardless of the
30 residence of the ownership of the individual, partnership, limited liability
31 company, or corporation.

32 (c) Each applicant for a delivery service license shall pay to the
33 board an annual license fee of three hundred dollars (\$300).

34 (d)(1) Each delivery service licensee shall conduct or have a third
35 party conduct a local and national criminal background check on a potential
36 employee that seeks to be licensed under this subchapter.

1 (2) A background check under this section shall include a
2 multistate criminal records locator or other similar commercial nationwide
3 database with validation.

4 (e) Each delivery service licensee shall ensure that each employee
5 delivering alcoholic beverages or beer is licensed under this subchapter.

6
7 3-4-1202. Delivery employee license – Creation.

8 (a) Effective September 1, 2017, there is created a delivery employee
9 license to be issued by the Alcoholic Beverage Control Board to an individual
10 employed by a person who delivers alcoholic beverages or beer under this
11 subchapter.

12 (b)(1) An individual seeking a delivery employee license shall make
13 application for the license by completing an application form prescribed by
14 the board.

15 (2) An applicant shall demonstrate that the applicant:

16 (A) Is at least twenty-one (21) years of age;

17 (B) Has been subject to a state and federal criminal
18 background check under this subchapter to ensure the individual has not been
19 convicted of a crime involving the sale or distribution of alcohol within the
20 previous eight (8) years and has not been convicted of any felony within the
21 previous five (5) years;

22 (C) Has a valid driver's license; and

23 (D)(i) Has completed a responsible alcohol server course
24 approved by the Alcoholic Beverage Control Division.

25 (ii) A course offered under subdivision (b)(2)(D)(i)
26 of this section shall be completed every two (2) years.

27 (c) An individual applying for a license under this section shall pay
28 to the board a fee of fifty dollars (\$50.00).

29 (d) A delivery employee license shall be valid for two (2) years.

30
31 3-4-1203. Delivery service operations.

32 (a) Effective September 1, 2017, a delivery service that delivers
33 prepared food from restaurants to customers as part of the delivery service's
34 business may deliver sealed packages of alcoholic beverages or beer or both
35 sold by a retailer licensed under this title to the delivery service's
36 customers if:

1 (1) The amount of alcoholic beverages and beer delivered to a
2 customer does not exceed more than two gallons (2 gal.) per customer per
3 delivery;

4 (2) At least fifty percent (50%) of the delivery service's gross
5 sales come from the delivery of food products or prepared food;

6 (3) A delivery service employee who delivers alcoholic beverages
7 or beer or both is twenty-one (21) years of age or older;

8 (4) The delivery service has:

9 (A) Made more than five thousand (5,000) deliveries in the
10 State of Arkansas;

11 (B) Posted a performance bond of five hundred thousand
12 dollars (\$500,000); and

13 (C) Insurance coverage for the delivery of alcoholic
14 beverages;

15 (5) The delivery service has a written agreement with a retailer
16 to deliver the retailer's alcoholic beverages or beer to customers; and

17 (6) Before a customer is allowed possession of alcoholic
18 beverages or beer, a delivery service employee who delivers alcoholic
19 beverages or beer requires the customer to show a valid, government-issued
20 document, such as a driver's license or other form of identification deemed
21 acceptable to the employee, that includes the photograph and birth date of
22 the customer establishing that the customer is twenty-one (21) years of age
23 or older.

24 (b) A delivery service shall not be prohibited from charging a fee to
25 customers when delivering sealed packages of alcoholic beverages or beer sold
26 by a retailer.

27 (c) A delivery service shall make its services available to all permit
28 holders under this title in the service area of the delivery service.

29 (d) A delivery under this subchapter shall not be made to any area of
30 the state in which the manufacture or sale of intoxicating liquor is
31 prohibited.

32
33 3-4-1204. Rules.

34 The Alcoholic Beverage Control Board may adopt rules to implement this
35 subchapter.

36 /s/Penzo