

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

HOUSE BILL 1852

5 By: Representatives Hawks, Magie
6 By: Senator K. Ingram
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW REGARDING ALCOHOLIC
10 BEVERAGES; TO ESTABLISH A MICROBREWERY-RESTAURANT
11 PRIVATE CLUB PERMIT; TO AMEND PORTIONS OF THE LAW
12 RESULTING FROM INITIATED ACT 1 OF 1942; AND FOR OTHER
13 PURPOSES.
14
15

Subtitle

16 TO AMEND THE LAW REGARDING ALCOHOLIC
17 BEVERAGES; TO AMEND PORTIONS OF THE LAW
18 RESULTING FROM INITIATED ACT 1 OF 1942;
19 AND TO ESTABLISH A MICROBREWERY-
20 RESTAURANT PRIVATE CLUB PERMIT.
21
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code Title 3, Chapter 5, is amended to add an
27 additional subchapter to read as follows:

Subchapter 19 – Microbrewery-Restaurant Private Club Permit

3-5-1901. Definitions.

As used in this subchapter:

30 (1) "Alcoholic beverage" means a beverage containing more than
31 five-tenths percent (0.5%) of alcohol by weight;
32

33 (2) "Barrel" means thirty-one gallons (31 gals.);
34

35 (3) "Beer" means a fermented liquor made from malt or a
36 substitute and having an alcoholic content not in excess of five percent (5%)



1 by volume;

2 (4) "Dry area" means an area in this state in which the
 3 manufacture or sale of beer is prohibited by a local-option election held
 4 pursuant to applicable laws of this state;

5 (5) "Malt beverage" means a liquor brewed from the fermented
 6 juices of grain and having an alcoholic content of at least five percent (5%)
 7 but not more than twenty-one percent (21%) by weight;

8 (6) "Microbrewery" means a brewery that manufactures one (1) or
 9 more varieties of beer, malt beverage, or hard cider in an aggregate quantity
 10 not to exceed forty-five thousand (45,000) barrels per year from all
 11 facilities under common ownership with the microbrewery;

12 (7) "Microbrewery-restaurant private club" means a nonprofit
 13 organization organized and existing under the laws of this state that:

14 (A) Is both a microbrewery and a restaurant;

15 (B) Has members, which are not directly or indirectly
 16 benefitted by the entity's net revenues;

17 (C) Exists for some common recreational, social,
 18 patriotic, political, national, benevolent, athletic, community hospitality,
 19 professional association, entertainment, or other object or purpose other
 20 than the consumption of alcoholic beverages; and

21 (D) Has existed for at least one (1) year; and

22 (8) "Restaurant" means a public or private place that:

23 (A) Is kept, used, maintained, advertised, and held out to
 24 the public or to a private or restricted membership as a place where complete
 25 meals are actually and regularly served;

26 (B) Has adequate and sanitary kitchen and dining
 27 equipment;

28 (C) Has seating capacity for at least fifty (50) people;

29 (D) Has sufficient number and type of employees to
 30 prepare, cook, and serve suitable food for its guests or members;

31 (E) Serves at least one (1) meal per day; and

32 (F) Is open for business a minimum of five (5) days per
 33 week, with the exception of holidays, vacations, and periods of redecorating.

34
 35 3-5-1902. Microbrewery-restaurant private club.

36 (a) A microbrewery-restaurant private club applicant shall be an

1 entity organized and existing under the laws of this state before applying
2 for a microbrewery-restaurant private club permit as prescribed in this
3 subchapter.

4 (b) The net revenues of the microbrewery-restaurant private club shall
5 not directly or indirectly benefit its members, except for the payment of
6 bona fide expenses of the microbrewery-restaurant private club's operations.

7 (c) Activities at the microbrewery-restaurant private club shall be
8 conducted for some common recreational, social, patriotic, political,
9 national, benevolent, athletic, community hospitality, professional
10 association, entertainment, or other object or purpose and not solely for the
11 consumption of alcoholic beverages.

12 (d)(1) At the time of application for a microbrewery-restaurant
13 private club permit, the entity shall own or lease, be the holder of a buy-
14 sell agreement or offer and acceptance, or have an option to lease a
15 building, property, or space for the reasonable comfort and accommodation of
16 its members and the families and guests of its members.

17 (2) The microbrewery-restaurant private club shall restrict the
18 use of club facilities to its members and the families and guests of its
19 members.

20 (e) For purposes of this subchapter, a person is a member of the
21 microbrewery-restaurant private club in a wet area of the state only upon
22 ordering an alcoholic beverage as defined under § 3-4-1901.

23 (f) If the entity holding a microbrewery-restaurant private club
24 permit additionally holds another alcoholic beverage permit, the hours of
25 operation authorized for the microbrewery-restaurant private club applies to
26 all permits of the entity.

27
28 3-5-1903. Microbrewery-restaurant private club – Procedure for
29 obtaining permit.

30 (a) A microbrewery-restaurant private club applicant may apply to
31 obtain a microbrewery-restaurant private club through the procedures provided
32 under § 3-9-222.

33 (b)(1) The application for a microbrewery-restaurant private club
34 shall be submitted to the division and accompanied by an annual permit fee of
35 one thousand five hundred dollars (\$1,500).

36 (2) In an area in which the sale of alcoholic beverages is not

1 authorized by local option under § 3-8-201 et. seq., the application for a
2 microbrewery-restaurant private club permit shall be accompanied by an
3 additional application fee of one thousand five hundred dollars (\$1,500).

4 (c)(1) After filing an acceptable application with the Director of the
5 Alcoholic Beverage Control Division, the applicant shall publish at least one
6 (1) time each week for four (4) consecutive weeks in a legal newspaper of
7 general circulation in the city in which the premises are situated or, if the
8 premises are not in a city, in a newspaper of general circulation for the
9 locality where the business is to be conducted, a notice that the applicant
10 has applied for a permit to dispense alcoholic beverages on the premises.

11 (2) The notice shall be:

12 (A) In such form as the director prescribes; and

13 (B) Verified.

14 (3) The notice shall list the name of the business owner and the
15 managing agent, as applicable, and shall state:

16 (A) That the manager, owner, at least one (1) partner, or
17 the majority stockholder is a resident of Arkansas;

18 (B) That he or she is of good moral character;

19 (C) That he or she has never been convicted of a felony;

20 (D) That he or she has never had a permit to sell or
21 dispense alcoholic beverages revoked within the five (5) years preceding the
22 date of the notice; and

23 (E) That he or she has never been convicted of violating
24 the laws of this state or of any other state governing the sale or dispensing
25 of alcoholic beverages.

26 (d)(1) Within five (5) days after filing an application for a permit
27 to dispense alcoholic beverages on the premises, a notice of the application
28 shall be posted in a conspicuous place at the entrance to the planned
29 premises.

30 (2) The applicant shall notify the director of the date when the
31 notice is first posted.

32 (3) A permit shall not be issued to an applicant until proper
33 notice has been posted on the premises for at least thirty (30) consecutive
34 days.

35 (4) The notice shall be in such form as the director shall
36 prescribe and shall be:

1 (A) At least eleven inches (11") in width and seventeen
2 inches (17") in height; and

3 (B) Printed in black lettering on a yellow background.

4 (e)(1) Upon receipt of an application for a permit and notification of
5 the posted notice as required under subsection (d) of this section, the
6 director shall immediately mail a copy of the application to the sheriff,
7 chief of police, if located within a city, prosecuting attorney of the
8 locality in which the premises are situated, and city board of directors or
9 other governing body of the city in which the premises are located.

10 (2) A permit shall not be issued by the director under this
11 section until at least thirty (30) days have passed from the mailing of the
12 notices required by this section.

13 (3) If the director receives notification of an objection to the
14 issuance of a permit from a governing official of the city or county within
15 the thirty (30) days required under subdivision (d)(3) of this section, the
16 director shall not issue the permit until he or she has held a public
17 hearing.

18 (f) The director may issue a permit as authorized in this section upon
19 determination that the applicant is qualified and that the application is in
20 the public interest.

21
22 3-5-1904. Permit – Scope – Restrictions.

23 (a) The Director of the Alcoholic Beverage Control Division may issue
24 a microbrewery-restaurant private club permit that authorizes the permittee
25 to:

26 (1) Operate a microbrewery-restaurant private club and
27 manufacture one (1) or more varieties of beer, malt beverage, or hard cider
28 in an aggregate quantity not to exceed forty-five thousand (45,000) barrels
29 per year from all facilities under common ownership with the microbrewery;

30 (2)(A) Store beer, malt beverage, and hard cider manufactured by
31 the microbrewery-restaurant private club and any other beer, malt beverage,
32 and hard cider that the microbrewery-restaurant private club permittee may
33 purchase from retailers and small brewers permitted by this state on the
34 microbrewery-restaurant private club permitted premises and on the premises
35 of the one (1) separate brewing facility of a microbrewery-restaurant private
36 club authorized under subdivision (a)(8) of this section.

1 (B) Two (2) or more microbrewery-restaurant private clubs
2 sharing common ownership or a brewery of any size sharing common ownership
3 with a microbrewery-restaurant private club shall be considered one (1)
4 entity for purposes of:

5 (i) Calculating barrel production; and

6 (ii) The transportation of beer, malt beverage, or
7 hard cider produced by one (1) entity among no more than three (3)
8 microbrewery-restaurant private clubs of the one (1) entity;

9 (3) Operate a restaurant that is the sales outlet for beer, malt
10 beverage, or hard cider manufactured by the microbrewery-restaurant private
11 club and that sells the beer, malt beverage, or hard cider and any other
12 beer, malt beverage, hard cider, or wine that the microbrewery-restaurant
13 private club permittee may purchase from retailers permitted by this state for
14 consumption on the permitted premises or purchased directly from permitted
15 small brewers allowed to distribute directly to the microbrewery-restaurant
16 private club;

17 (4) Sell on the premises beer, malt beverage, or hard cider
18 manufactured by the microbrewery-restaurant private club or commonly owned
19 facility to a member for on-premises consumption during legal operating
20 hours;

21 (5) Serve to a member on-premises complimentary samples of beer,
22 malt beverages, or hard cider produced by the microbrewery-restaurant private
23 club;

24 (6) Sell beer, malt beverage, or hard cider of its own
25 manufacture to a wholesale dealer permitted by this state for the purpose of
26 resale to other retail permit holders under §§ 3-4-605 and 3-5-101, dealing
27 with wholesale distribution of beer, malt beverage, and hard cider;

28 (7)(A) Conduct beer-tasting, malt beverage-tasting, and hard
29 cider-tasting events for educational or promotional purposes at any location
30 in wet areas of this state if:

31 (i) A request for approval to conduct a beer-
32 tasting, malt beverage-tasting, and hard cider-tasting event is received by
33 the Alcoholic Beverage Control Division at least two (2) weeks before the
34 event;

35 (ii) The request is approved by the division; and

36 (iii) Written notice is given by the division to the

1 permit holder at least five (5) days before the event.

2 (B) The microbrewery-restaurant private club shall use
3 only beer, malt beverage, and hard cider produced by the microbrewery-
4 restaurant private club for an event approved under subdivision (a)(8)(A) of
5 this section.

6 (C) Subdivision (a)(8)(A) of this section does not
7 authorize the conducting of a beer-tasting, malt beverage-tasting, and hard
8 cider-tasting event at a separate brewing facility of a microbrewery-
9 restaurant private club authorized under subdivision (a)(9) of this section;
10 and

11 (8)(A) Maintain one (1) separate brewing facility for the
12 production or storage of beer, malt liquor, and hard cider as needed to meet
13 demand, except that each facility used by the microbrewery-restaurant private
14 club permittee shall not in the aggregate produce more than forty-five
15 thousand (45,000) barrels of beer, malt beverage, and hard cider per year.

16 (B) Beer, malt beverage, and hard cider produced by a
17 separate brewing facility of a microbrewery-restaurant private club permittee
18 shall be:

19 (i) Sold to a permitted wholesaler; or

20 (ii) Transported:

21 (a) From the separate brewing facility to a
22 microbrewery-restaurant private club commonly owned by the owner of the
23 separate brewing facility for retail sale for consumption on the permitted
24 premises; or

25 (b) To the separate brewing facility from a
26 microbrewery-restaurant private club commonly owned by the owner of the
27 separate brewing facility for storage, production, or packaging.

28 (b) The director may issue a microbrewery-restaurant private club
29 permit if the microbrewery-restaurant private club premises are in a dry area
30 and the governing body has approved an applicant under § 3-5-1903.

31 (c)(1) Except as provided in subdivision (c)(2) of this section, after
32 October 1, 2019, the director shall not issue a microbrewery-restaurant
33 private club permit to a person or entity having more than five percent (5%)
34 common ownership with a person or entity holding a permit under the Arkansas
35 Small Brewery Act, § 3-5-1401 et seq., or qualifying as a supplier under § 3-
36 5-1102.

1 (2) The director may issue an additional microbrewery-restaurant
2 private club permit after October 1, 2019, to a person or entity holding a
3 microbrewery-restaurant private club permit as of October 1, 2019, and having
4 more than five percent (5%) common ownership with a person or entity if the
5 person or entity holds a permit under the Arkansas Small Brewery Act, § 3-5-
6 1401 et seq., or qualifies as a supplier under § 3-5-1102.

7
8 3-5-1905. Microbrewery-restaurant private clubs – Sales prohibited.

9 (a) A microbrewery-restaurant private club permitted under this
10 subchapter shall not sell alcoholic beverages either by the package or by the
11 drink to a:

12 (1) Nonmember for on-premises or off-premises consumption; or

13 (2) Member for off-premises consumption.

14 (b) If a permittee sells, barter, loans, or gives away an alcoholic
15 beverage in violation of this subchapter or other alcoholic beverage control
16 laws of this state, the permit of the club shall be revoked.

17
18 3-5-1906. Fees and taxes.

19 A microbrewery-restaurant private club permittee shall:

20 (1) Pay the applicable city or county permit fees and barrelage
21 or taxes and shall pay a state permitting fee to the Alcoholic Beverage
22 Control Division of seven hundred fifty dollars (\$750) per fiscal year to
23 manufacture and sell to members its beer, malt beverages, and hard cider for
24 consumption on the premises and to sell to members other beer, malt
25 beverages, and hard cider purchased from a permitted wholesaler for
26 consumption on the premises;

27 (2) Measure beer, malt beverages, and hard cider manufactured by
28 the microbrewery-restaurant private club, otherwise comply with applicable
29 excise and enforcement tax determinations of the beer, malt beverages, and
30 hard cider, and pay any applicable bond or deposit and the amount of the
31 state excise tax and enforcement tax to this state, except the fees and taxes
32 provided in § 3-5-205, and as required by §§ 3-7-104 and 3-7-111; and

33 (3) Pay a tax at the rate of seven dollars and fifty cents
34 (\$7.50) per barrel, and proportionately for larger and smaller gallonages per
35 barrel, on all beer, malt beverages, and hard cider in quantities of up to
36 forty-five thousand (45,000) barrels per year produced and sold or offered

1 for sale in the state.

2
3 3-5-1907. Microbrewery-restaurant private clubs – Reapplication for
4 permit.

5 (a) An entity that is denied upon application to the Director of the
6 Alcoholic Beverage Control Division for a permit to operate as a
7 microbrewery-restaurant private club in a dry territory may reapply by
8 following the procedures stated in § 3-5-1903 and the additional procedures
9 provided for in subsection (b) of this section.

10 (b)(1) If the applicant is reapplying within two (2) years from the
11 date an application was denied by the director, the application shall be
12 accompanied by certification from the county clerk of the county in which the
13 microbrewery-restaurant private club is to be located certifying that the
14 applicant obtained signatures from at least twenty-five percent (25%) of the
15 registered voters in the county.

16 (2) The application under this section shall be filed no later
17 than twenty (20) days from the date that the county clerk certifies the
18 petition.

19 (3) The petition on which the signatures are obtained under this
20 section shall state clearly that the purpose of the petition is to obtain an
21 alcoholic beverage permit for a microbrewery-restaurant private club and to
22 serve alcoholic beverages to members.

23 (4) The person obtaining signatures shall verify the signatures
24 by affidavit that shall be filed with the county clerk at the time of filing
25 the petition for certification.

26
27 3-5-1908. Collection of taxes.

28 (a) The Director of the Department of Finance and Administration shall
29 assess and collect delinquent state and local taxes from the owner or owners
30 of the microbrewery-restaurant private club, file claims for unpaid taxes
31 against bonds or other security required to be posted by the permittee, and
32 enforce liens against assets held by the owner or owners.

33 (b) The Alcoholic Beverage Control Division may suspend or refuse to
34 renew a permit held by a nonpartner if the microbrewery-restaurant private
35 club owner fails to remit state or local taxes.

36

1 3-5-1909. Inspection of premises – Records of permitted premises and
2 private clubs.

3 (a) A permit shall not be issued under this subchapter unless the
4 permittee has consented in writing that the permitted premises and its books
5 and records are open at all times to all law enforcement and tax officials
6 and officials of the Alcoholic Beverage Control Division, the Alcoholic
7 Beverage Control Enforcement Division, and the Director of the Department of
8 Finance and Administration without requirement of warrant or other legal
9 process.

10 (b) An entity holding a permit under this subchapter shall not market,
11 sell, or otherwise furnish the names of its members or other information
12 pertaining to its members to another public or private entity, except as
13 provided in subsection (a) of this section.

14
15 SECTION 2. Arkansas Code § 3-8-209(a), concerning the penalty for sale
16 or furnishing a place to sell in a dry area resulting from Initiated Act 1 of
17 1942, is amended to read as follows:

18 ~~It shall be~~ Except as provided in § 3-5-1901 et seq., it is
19 unlawful for ~~any~~ a person, firm, or corporation to manufacture, sell, barter,
20 loan, or give away intoxicating liquor in ~~any~~ a county, township,
21 municipality, ward, or precinct in which the manufacture or sale of
22 intoxicating liquor is ~~or shall be~~ prohibited under ~~the provisions of~~
23 Initiated Act No. 1 of 1942, §§ 3-8-201 – 3-8-203 and 3-8-205 – 3-8-209.