

**MARK UP COPY**

**Amendment to Section 2.53 Microbrewery-Restaurant and Separate Brewing Facility Application and Operations, Allowed.**

- (A) Pursuant to Act 611 of 1991, as amended, a A microbrewery-restaurant operation ~~is allowed to shall~~ brew manufacture beer, ~~containing not in excess of five percent (5%) alcohol by weight and to brew malt beverage products, or hard cider, and to may~~ sell the same, or products produced at the permittee's separate brewing facility, at a restaurant as defined in the Act, for consumption on or off the premises. The microbrewery portion of the microbrewery-restaurant permitted operation (hereinafter "permitted business") shall be separated from the restaurant portion of the permitted business by a solid wall. The wall may be made of glass or other materials, but shall prevent direct access by the public patronizing the restaurant. If the operator of the permitted business does desire to allow members of the public to take a tour of the brewery, such tour shall only be conducted under the direct supervision of brewery personnel. Microbrewery-Restaurant permittees may store the manufactured beer, malt beverage, or hard cider and any other beer, malt beverage, or hard cider which the permittee may purchase from wholesalers and small brewers licensed by this state on the microbrewery-restaurant premises and on the premises of the one (1) separate brewing facility of the microbrewery-restaurant. Two (2) or more microbrewery-restaurants sharing ownership or a brewery of any size sharing common ownership with a microbrewery-restaurant shall be considered one (1) entity for the purposes of calculating barrel production and transportation of beer, malt beverage, or hard cider produced by one (1) entity among no more than three (3) microbrewery restaurant facilities of the one (1) entity.
- (B) A microbrewery-restaurant permittee may maintain one (1) separate brewing facility for production or storage of beer, malt beverage, or hard cider as needed to meet demand, except that each facility used by the microbrewery-restaurant permittee shall not in the aggregate produce more than forty-five thousand (45,000) barrels of beer, malt beverage, and hard cider per year.
- (C) A microbrewery restaurant permittee shall notify the Alcoholic Beverage Control of its intent to operate a separate brewing facility by providing the following documentation:
- 1) A completed Separate Brewing Facility application form;
  - 2) A floor plan of the proposed premises;
  - 3) At least four (4) photographs of the proposed premises, depicting the front, back, and sides of the building;
  - 4) Copies of any permits required by the Alcohol and Tobacco Tax and Trade Bureau for production at the location, if applicable; and
  - 5) Certification that the proposed facility is in compliance with any local zoning requirements for the location.

Upon receipt of the required documentation, the Alcoholic Beverage Control shall issue an endorsement to the microbrewery restaurant permittee. The endorsement shall be posted on the premises in compliance with the specifications set forth in Section 1.37.

## **SUMMARY**

Act 308 of 2017 increased the production limits for microbrewery restaurants. It also authorized microbrewery restaurant permittees to maintain a separate brewing facility. This rule incorporates the provisions of Act 308 of 2017 into existing ABC rules. It also provides a means by which the microbrewery restaurant shall notify the ABC of its intent to operate a separate brewing facility.

## Proposed New Rule

### **Amendment to Section 2.53 *Microbrewery-Restaurant and Separate Brewing Facility Application and Operations.***

- (A) A microbrewery-restaurant shall manufacture beer, malt beverage products, or hard cider, and may sell the same, or products produced at the permittee's separate brewing facility, for consumption on or off the premises. The microbrewery portion of the microbrewery-restaurant permitted operation (hereinafter "permitted business") shall be separated from the restaurant portion of the permitted business by a solid wall. The wall may be made of glass or other materials, but shall prevent direct access by the public patronizing the restaurant. If the operator of the permitted business does desire to allow members of the public to take a tour of the brewery, such tour shall only be conducted under the direct supervision of brewery personnel. Microbrewery-Restaurant permittees may store the manufactured beer, malt beverage, or hard cider and any other beer, malt beverage, or hard cider which the permittee may purchase from wholesalers and small brewers licensed by this state on the microbrewery-restaurant premises and on the premises of the one (1) separate brewing facility of the microbrewery-restaurant. Two (2) or more microbrewery-restaurants sharing ownership or a brewery of any size sharing common ownership with a microbrewery-restaurant shall be considered one (1) entity for the purposes of calculating barrel production and transportation of beer, malt beverage, or hard cider produced by one (1) entity among no more than three (3) microbrewery restaurant facilities of the one (1) entity.
- (B) A microbrewery-restaurant permittee may maintain one (1) separate brewing facility for production or storage of beer, malt beverage, or hard cider as needed to meet demand, except that each facility used by the microbrewery-restaurant permittee shall not in the aggregate produce more than forty-five thousand (45,000) barrels of beer, malt beverage, and hard cider per year.
- (C) A microbrewery restaurant permittee shall notify the Alcoholic Beverage Control of its intent to operate a separate brewing facility by providing the following documentation:
- 1) A completed Separate Brewing Facility application form;
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  - 5) Certification that the proposed facility is in compliance with any local zoning requirements for the location.

Upon receipt of the required documentation, the Alcoholic Beverage Control shall issue an endorsement to the microbrewery restaurant permittee. The endorsement shall be posted on the premises in compliance with the specifications set forth in Section 1.37.

## Proposed New Rule

### ***Amendment to Section 1.23 Publication of Notice That Application Has Been Made for Permit.***

After filing an acceptable application with the Director, the applicant shall cause to be published at least once a week for two (2) consecutive weeks in a legal newspaper of general circulation in the city or locality where the business is to be located a notice that the applicant has applied for a permit to sell, manufacture or dispense controlled beverages, as applicable. The newspaper publishing the notice shall have a physical address within the county of the proposed location of the business identified in the application. If the county does not have a newspaper, then the publication shall be placed in a newspaper with the nearest physical address of the location of the business identified in the application. The notice shall be verified and shall give the name of the applicant and the name and address or location of the business, and shall state that the applicant is a resident of Arkansas, that he or she has good moral character, that he or she has never been convicted of a felony or had a permit revoked within the five (5) years preceding the date of notice. ***Provided***, that this requirement shall not apply under the following circumstances: 1) If the applicant holds a restaurant mixed drink permit and subsequently makes application for a beer and/or wine permit ~~only~~ at the same location; and 2) If the applicant holds a small farm wine retail permit and subsequently makes application for a grocery store wine permit at the same location. ***It is further provided*** that applicants for a retail liquor permit or a private club permit shall be required to publish at least once a week for four (4) consecutive weeks in a legal newspaper as described above, per the authority of Act 735 of 2007.

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## **SUMMARY**

This rule is being amended to facilitate the application process for the Grocery Store Wine permit created by Act 508 of 2017. ABC waives the notice by publication requirement for current permittees who apply for permits to sell products with equal or lesser alcohol content as the products currently being sold by the business. Many of the applicants that qualify as grocery stores under Act 508 of 2017 are currently permitted to sell wine products within the same range allowed under the Grocer Store Wine permit. They are currently licensed to sell wine products not in excess of 21% alcohol by weight; therefore, the public has already been notified that this type of product is sold on the premises.

## **Proposed New Rule**

### **Amendment to Section 1.26 *Notice of Application to be Posted at Premises.***

Within five (5) days after filing an application for any permit issued by the Alcoholic Beverage Control Division at any premises, a notice of the application in a form approved by the Director shall be posted in a conspicuous place at the front entrance to the premises. The applicant shall notify the Director of the date such notice was first posted. No application may be acted on and no permit issued to any applicant until the application has been in the possession of the agency and proper notice has been so posted on the premises for a period of at least thirty (30) consecutive days.

**Provided**, that this requirement shall not apply to an applicant for a permit to conduct business at a premises for which a valid permit of the same type is in existence at the time of said applicant's application nor shall it apply under the following circumstances: 1) If the applicant holds a restaurant mixed drink permit and subsequently makes application for a beer and/or wine permit at the same location; or 2) If the applicant holds a small farm wine retail permit and subsequently makes application for a grocery store wine permit at the same location.

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## Proposed New Rule

***Amendment to Section 1.33(2) Premises Operated in Conjunction with Certain Other Businesses.*** No off premises retail liquor permit shall be operated as part of the profit making business of any billiard hall, pool room, drug, grocery, sporting goods, dry goods, hardware, general mercantile store, or any other business unrelated to such permit; however, the retail liquor store permittee may have tobacco products, mixers, soft drinks, consumables and edible products that complement alcoholic beverages, and other items customarily associated with the retail package sale of the liquors. Edible products may include:

- a. Lemons, limes, cherries, olives and other food items used in the preparation or garnishment of alcoholic beverages or mixed alcoholic beverages;
- b. Peanuts, pretzels, chips, crackers, and other packaged snack foods and confectionaries; and
- c. Prepackaged food items, including, but not limited to, cheese, meat, and appetizers.
- d. Retail liquor stores shall not cook, prepare, or package food items on the premises of the retail liquor store for the purpose of resale.

Consumable products may include:

- a. Party supplies, party decorations, gift bags, gift baskets, greeting cards and other items for parties and special events; and
- b. Ice in any form.

Items customarily associated with the retail package sale of liquors may include:

- a. Beverage coolers, beverage insulators, and ice chests;
- b. Items used in the preparation of mixed drinks, including, without limitation, beverage strainers, pourers, jiggers, stirrers, ice crushers, and ice molds;
- c. Decanters, carafes, glassware, and drinkware;
- d. Bottle openers and can openers; and
- e. Corkscrews, wine aerators, bottle stoppers, and devices designed to preserve wine.

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- c. Decanters, carafes, glassware, and drinkware;
- d. Bottle openers and can openers; and
- e. Corkscrews, wine aerators, bottle stoppers, and devices designed to preserve wine.

## **SUMMARY**

Act 508 of 2017 authorizes retail liquor stores to begin selling consumables and edible products that complement alcoholic beverages. Act 508 instructs the ABC to promulgate rules to facilitate the sale of these items.

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### ***Amendment To Section 2.28(4) Gifts and Services to Retailers***

***Prohibited.*** That the manufacturer or wholesaler gave an article or articles away of any value or use whatsoever, or provided any services for the use or benefit of any person holding a permit to sell controlled beverages at retail. It is specifically provided that the practice of pricing alcoholic beverages for a retail permit holder by a manufacturer or wholesaler is not considered a prohibited service under this Regulation.

In addition, the following practices are not prohibited gifts or services under this Regulation: manufacturers and wholesalers may provide point of sale advertising items and related services to retailers in conformity with current federal regulations as long as the furnished item does not constitute a real or secondary gift to the retailer receiving it; notwithstanding any other Regulation to the contrary, wholesalers may as a permitted service deliver product, provide keg-tapping and cooling equipment, delivery lines, and keg hook-up service to holders of temporary beer permits and temporary restaurant wine permits on any day such permits are in effect; wholesalers may provide keg-tapping and cooling equipment, delivery lines, and keg hook-up service to consumers at the request of and as a permitted service to retail permit holders in any area where the sale of alcoholic beverages is legal. ***Provided,*** a wholesaler may not deliver any alcoholic beverages to a consumer, and a wholesaler's employees may not be involved in any way with the dispensing of alcoholic beverages and serving such beverages to consumers.

***Product Display*** means any alcoholic beverage racks, bins, barrels, casks, shelving or similar items the primary function of which is to hold and display consumer products.

A wholesaler may give or sell a "product display" to a retailer so long as:

- (1) the total value of all product displays provided by the wholesaler does not exceed three hundred dollars (\$300.00) per brand at any one time in any one retail outlet;
- (2) the display bears conspicuous and substantial advertising matter on the product. The name and address of the retailer may appear on the displays;
- (3) the giving or selling may be conditioned upon the purchase of the distilled spirits, wine, or malt beverages advertised on those displays in a quantity necessary for the initial completion of such display. No other condition can be imposed by the wholesaler on the retailer in order for the retailer to receive or obtain the product display.

A wholesaler may give or sell the following to a retailer:

***Point of Sale Advertising Materials*** are items designed to be used within a retail establishment to attract consumer attention to the products of the industry member. Such materials include, but are not limited to: posters, placards, designs, inside signs (electrical, mechanical, or otherwise), window decorations, trays, coasters, mats, menu cards, foam scrapers, back bar mats, thermometers, clocks, calendars, and alcoholic beverage lists or menus.

Beer wholesalers may give, loan or sell inside signs (electrical, mechanical, or otherwise). Inside signs for spirits, wines or malt liquors shall not be loaned.

***Consumer Advertising Specialties*** are items designed to be carried away by the consumer, such as trading stamps, non-alcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, and pencils. Umbrellas, caps, shirts, and visors shall be sold, not given, by the wholesalers to the retailer. The minimum value of umbrellas, caps, shirts and visors shall be the price paid by the industry member who first acquired the merchandise.

All point of sale advertising materials and consumer advertising specialties must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed. The name, logo, address and web site of the retailer may appear on the point of sale advertising material. Any non-promotional item that the business would buy in the normal course of business must be sold, not given, by a wholesaler to a retailer.

A wholesaler may, without violating the provisions of these Regulations, and subject to approval by the Director on such form provided by the Agency, no less than five (5) working days prior to the qualified event, rent for fifty dollars (\$50.00) per tap and associated cooling equipment or fair market value, whichever is greater, cooling and keg-tapping equipment, keg hook-up service and delivery lines to a retail permit holder for a special purpose. These provisions shall apply only to events outside of the normal course of the retail permit holder's ordinary course of business, not to exceed ten (10) days in duration.

It is specifically provided that if a manufacturer or wholesaler provides any of the services for a retailer allowable under this Section, he must provide the same service upon request to any other retailer who purchases the product; (Amended 8-16-11)

**High Alcoholic Content Beverages – Stocking, Pricing, and Rotating**

**A. Persons holding valid Arkansas wholesale alcoholic beverage permits, their agents, servants or employees, manufacturers' agents, importers**

and brokers may price, stock and rotate merchandise at retail premises only to the following extent:

- (1) Wholesale dealers in spirituous and vinous beverages and malt beverages of more than five (5%) percent alcohol by weight may build stock displays of their product on the premises of retail dealers. Displays may in no way be part of the dealer's regular shelving. Wholesaler dealers may restock displays for a maximum period of one month after the initial display has been installed. They may not price the displays and are prohibited from pricing and stocking shelves on the premises of retail dealers and from affixing security tags. Industry members are granted authority to maintain the quality of their product on retail shelves, provided, that products purchased from other industry members are not altered or disturbed. The act of picking up alcoholic beverages in excess of five (5%) percent alcohol by weight for credit or exchange from a retail dealer by a wholesale dealer is considered a consignment sale and is therefore specifically prohibited.
- (2) No wholesale dealer of spirituous and vinous beverages and malt beverages that are more than five (5%) percent alcohol by weight shall handle or move any alcoholic beverages delivered to the premises of a retail dealer by a competing wholesale dealer, nor shall a wholesale dealer reset all or any part of the alcoholic beverages situated on the premises of a retail dealer. A wholesale dealer may engage in the initial setting of products into a new store, previous to the new store opening for business.
- (3) A wholesale dealer whose products are situated on the premises of a retail dealer must be given the opportunity to participate in any movement or reset of those products, and no retail dealer shall, under any circumstances, exclude a wholesale dealer from such participation. The reset of all or any part of the alcoholic beverages situated on the premises of a retail dealer may not occur more than twice during any calendar year. The stocking of cold boxes by a wholesale dealer in a retail dealer's premises is permitted.
- (4) The stocking of shelves by a wholesale dealer of spirituous and vinous beverages in a retail dealer's premises is prohibited. The act of manually entering delivery or invoice information into the retail dealer's computer system at the time of delivery is prohibited.
- (5) Except as authorized herein, employees of a wholesale dealer shall not, in connection with the sale or delivery of alcoholic beverages to a retail dealer, provide any services whatsoever to a retail dealer.

B. The Director of the Alcohol Beverage Control Division may suspend or revoke the permit or permits of a violator and may impose such other penalties or administrative remedies as are prescribed by law for violations of the Alcoholic Beverage Control Law.

**Slotting Allowance Prohibited.** Slotting allowances, defined as allowances paid by a manufacturer to a grocery store for making room for a product on the grocery store's shelves, are prohibited.

#### **SUMMARY**

Act 508 of 2017 prohibits slotting allowances, i.e. allowances paid by a manufacturer to a grocery store for making room for a product on the grocery store's shelves. ABC Rules and Regulations have always prohibited, with narrow exceptions, wholesalers providing gifts and services to retailers. This rule is being amended to clarify certain gifts and services that may not be provided to retailers concerning the stocking of shelves.

## Proposed New Rule

### ***Amendment To Section 2.28(4) Gifts and Services to Retailers***

***Prohibited.*** That the manufacturer or wholesaler gave an article or articles away of any value or use whatsoever, or provided any services for the use or benefit of any person holding a permit to sell controlled beverages at retail. It is specifically provided that the practice of pricing alcoholic beverages for a retail permit holder by a manufacturer or wholesaler is not considered a prohibited service under this Regulation.

In addition, the following practices are not prohibited gifts or services under this Regulation: manufacturers and wholesalers may provide point of sale advertising items and related services to retailers in conformity with current federal regulations as long as the furnished item does not constitute a real or secondary gift to the retailer receiving it; notwithstanding any other Regulation to the contrary, wholesalers may as a permitted service deliver product, provide keg-tapping and cooling equipment, delivery lines, and keg hook-up service to holders of temporary beer permits and temporary restaurant wine permits on any day such permits are in effect; wholesalers may provide keg-tapping and cooling equipment, delivery lines, and keg hook-up service to consumers at the request of and as a permitted service to retail permit holders in any area where the sale of alcoholic beverages is legal. ***Provided,*** a wholesaler may not deliver any alcoholic beverages to a consumer, and a wholesaler's employees may not be involved in any way with the dispensing of alcoholic beverages and serving such beverages to consumers.

***Product Display*** means any alcoholic beverage racks, bins, barrels, casks, shelving or similar items the primary function of which is to hold and display consumer products.

A wholesaler may give or sell a "product display" to a retailer so long as:

- (1) the total value of all product displays provided by the wholesaler does not exceed three hundred dollars (\$300.00) per brand at any one time in any one retail outlet;
- (2) the display bears conspicuous and substantial advertising matter on the product. The name and address of the retailer may appear on the displays;
- (3) the giving or selling may be conditioned upon the purchase of the distilled spirits, wine, or malt beverages advertised on those displays in a quantity necessary for the initial completion of such display. No other condition can be imposed by the wholesaler on the retailer in order for the retailer to receive or obtain the product display.

A wholesaler may give or sell the following to a retailer:

**Point of Sale Advertising Materials** are items designed to be used within a retail establishment to attract consumer attention to the products of the industry member. Such materials include, but are not limited to: posters, placards, designs, inside signs (electrical, mechanical, or otherwise), window decorations, trays, coasters, mats, menu cards, foam scrapers, back bar mats, thermometers, clocks, calendars, and alcoholic beverage lists or menus.

Beer wholesalers may give, loan or sell inside signs (electrical, mechanical, or otherwise). Inside signs for spirits, wines or malt liquors shall not be loaned.

**Consumer Advertising Specialties** are items designed to be carried away by the consumer, such as trading stamps, non-alcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, and pencils. Umbrellas, caps, shirts, and visors shall be sold, not given, by the wholesalers to the retailer. The minimum value of umbrellas, caps, shirts and visors shall be the price paid by the industry member who first acquired the merchandise.

All point of sale advertising materials and consumer advertising specialties must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed. The name, logo, address and web site of the retailer may appear on the point of sale advertising material. Any non-promotional item that the business would buy in the normal course of business must be sold, not given, by a wholesaler to a retailer.

A wholesaler may, without violating the provisions of these Regulations, and subject to approval by the Director on such form provided by the Agency, no less than five (5) working days prior to the qualified event, rent for fifty dollars (\$50.00) per tap and associated cooling equipment or fair market value, whichever is greater, cooling and keg-tapping equipment, keg hook-up service and delivery lines to a retail permit holder for a special purpose. These provisions shall apply only to events outside of the normal course of the retail permit holder's ordinary course of business, not to exceed ten (10) days in duration.

It is specifically provided that if a manufacturer or wholesaler provides any of the services for a retailer allowable under this Section, he must provide the same service upon request to any other retailer who purchases the product; (Amended 8-16-11)

**High Alcoholic Content Beverages – Stocking, Pricing, and Rotating**

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- (2) No wholesale dealer of spirituous and vinous beverages and malt beverages that are more than five (5%) percent alcohol by weight shall handle or move any alcoholic beverages delivered to the premises of a retail dealer by a competing wholesale dealer, nor shall a wholesale dealer reset all or any part of the alcoholic beverages situated on the premises of a retail dealer. A wholesale dealer may engage in the initial setting of products into a new store, previous to the new store opening for business.
- (3) A wholesale dealer whose products are situated on the premises of a retail dealer must be given the opportunity to participate in any movement or reset of those products, and no retail dealer shall, under any circumstances, exclude a wholesale dealer from such participation. The reset of all or any part of the alcoholic beverages situated on the premises of a retail dealer may not occur more than twice during any calendar year. The stocking of cold boxes by a wholesale dealer in a retail dealer's premises is permitted.
- (4) The stocking of shelves by a wholesale dealer of spirituous and vinous beverages in a retail dealer's premises is prohibited. The act of manually entering delivery or invoice information into the retail dealer's computer system at the time of delivery is prohibited.
- (5) Except as authorized herein, employees of a wholesale dealer shall not, in connection with the sale or delivery of alcoholic beverages to a retail dealer, provide any services whatsoever to a retail dealer.

B. The Director of the Alcohol Beverage Control Division may suspend or revoke the permit or permits of a violator and may impose such other penalties or administrative remedies as are prescribed by law for violations of the Alcoholic Beverage Control Law.

**Slotting Allowance Prohibited.** Slotting allowances, defined as allowances paid by a manufacturer to a grocery store for making room for a product on the grocery store's shelves, are prohibited.

## Proposed New Rule

### ***Section 3.17.3 Retailer Loyalty Programs***

- (A) For the purposes of the section, a loyalty program is defined as a marketing program that offers certain incentives to encourage customer retention.
- (B) The holder of a manufacturer or wholesale tier license or permit cannot directly or indirectly reimburse a retailer for any costs associated with a loyalty program.
- (C) A retailer may offer a loyalty program subject to the following conditions:
  - a. The loyalty program may give consumers discounts on the purchase of alcoholic beverages and on non-alcoholic products or items.
  - b. The loyalty program may have a point accrual and redemption component in addition to discounts. Accrued points may be redeemed on alcoholic beverage or non-alcoholic beverage products or items.
  - c. Loyalty program point accrual and redemption components shall only be offered on the final sale of alcoholic beverage or non-alcoholic beverage products. Increased loyalty program awards or point values for the purchase of specific alcoholic beverage or non-alcoholic product brands is strictly prohibited.

## **Proposed New Rule**

**Section 2.66 Separate Brewing Facility - Application.** An Arkansas Small Brewery permittee shall notify the Alcoholic Beverage Control of its intent to operate a separate brewing facility by providing the following documentation:

- 1) A completed Separate Brewing Facility application form;
- 2) A floor plan of the proposed premises;
- 3) At least four (4) photographs of the proposed premises, depicting the front, back, and sides of the building;
- 4) Copies of any permits required by the Alcohol and Tobacco Tax and Trade Bureau for production at the location, if applicable; and
- 5) Certification that the proposed facility is in compliance with any local zoning requirements for the location.

Upon receipt of the required documentation, the Alcoholic Beverage Control shall issue an endorsement to the small brewery permittee. The endorsement shall be posted on the premises in compliance with the specifications set forth in Section 1.37.

### **Proposed New Rule**

**Section 2.67 Small Brewery Tap Room - Application.** An Arkansas Small Brewery permittee shall complete an application for a small brewery tap room. The same posting, publication, and notice requirements of applicants for a retail beer permit shall apply to small brewery tap room applicants. Small Brewery permittees shall designate a managing agent for each small brewery tap room and permittees shall notify the Alcoholic Beverage Control of any change in the managing agent. The managing agent shall either live in the same county as the location of the tap room or within thirty five (35) miles of the tap room. Upon submission to the ABC of the required application and completion of the posting, publication, and notice requirements, the Director of the ABC may issue an endorsement to the Small Brewery Permittee for the operation of a Small Brewery Tap Room. The endorsement shall be posted on the premises of the tap room in compliance with the specifications set forth in Section 1.37. If the Director refuses to issue the Small Brewery Tap Room endorsement to the Small Brewery permittee, the Director's decision may be appealed to the Alcoholic Beverage Control Board pursuant to Section 1.51.

### **Proposed New Rule**

#### **Amendment to Section 1.27 *Application for Transfer of Location of Premises.***

Any person holding a permit issued pursuant to any alcoholic beverage law of the State of Arkansas who desires to transfer the location of the permitted premises shall make application therefor to the Director. In addition to such other information as the Director may determine shall be provided, such application shall include the following:

- (1) Any changes in the information given or statements made in the original application for the permit;
- (2) The street and number of the premises to be permitted and a description of the premises, including a floor plan showing the dimensions thereof. If the premises to which the permit is to be transferred is not constructed or completed at the time of the application, the applicant shall attach to the application a site plan of the property which shall clearly show the construction of the premises, including the dimensions thereof and the relation of the proposed premises to surrounding structures, if any;  
(Amended 8-19-93)
- (3) The name and address of the owner of the premises to which the permit is to be transferred. If the applicant is not the owner of the premises to which the permit is to be transferred, the applicant must state the name(s) of all person(s) holding a leasehold interest in the premises and a copy of the lease or other agreement for the use of the premises by the applicant shall be attached to the application.
- (4) Any application to transfer a private club permit, including a large event center private club permit, shall be accompanied by an ordinance of the governing body of the county or municipality into which the private club seeks to transfer approving the transfer of the permit into that municipality or county. The Director shall not accept an application to transfer a private club permit unless a copy of the required ordinance is submitted with the application.

The application for a transfer of location of the permitted premises shall be verified in the same manner as required for an original application under these Regulations.

Under no circumstances shall this Regulation authorize the transfer of the old permit to the new premises by endorsement or otherwise. In each case the Director shall issue a new permit upon approval of the transfer of location of permitted premises. Immediately upon receipt of the new permit the permittee shall surrender the old permit to the Director.

**MARK UP COPY**

**Amendment to Section 1.27 Application for Transfer of Location of Premises.**

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The application for a transfer of location of the permitted premises shall be verified in the same manner as required for an original application under these Regulations.

Under no circumstances shall this Regulation authorize the transfer of the old permit to the new premises by endorsement or otherwise. In each case the Director shall issue a new permit upon approval of the transfer of location of permitted premises. Immediately upon receipt of the new permit the permittee shall surrender the old permit to the Director.

### **SUMMARY**

Act 1112 of 2017 requires applicants for private club permits to obtain an ordinance from the municipality or county in which the club seeks to operate prior to filing an application with the ABC.

### **Proposed New Rule**

**Amendment to Section 1.34 Continuation of Permit Conditioned Upon Operation of Originally Proposed Business.** Any permit issued by the Alcoholic Beverage Control Division shall remain valid only for use in the business described in the original application including any attachments, letters, statements, or testimony given at the hearing on such application. If no written business and/or entertainment plan was required by this agency at the time such permit was issued, then the business operation shall be defined as it has historically operated during the two (2) years immediately prior to the adoption of this regulation.

Permittees shall submit an amended entertainment plan for the Director's approval prior to implementing any material changes in the entertainment or business operations proposed in the original application or in the manner the business has historically operated. Private club permittees shall submit an ordinance from the governing body of the county or municipality in which the private club is located authorizing the proposed changes in entertainment or business operations.

The maintenance of such business operations shall be deemed a condition of the permittee's right to retain any permit. Any material change in the business operations proposed in the original application or in the manner the business has historically operated per above, without prior approval of the Director, shall be grounds for the revocation of any such permit. (Amended 8-17-05)

## **MARK UP COPY**

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## **SUMMARY**

Act 1112 of 2017 requires applicants for private club permits to obtain an ordinance from the municipality or county in which the club seeks to operate prior to filing an application with the ABC. This rule is being amended to ensure that private clubs remain compliant with the local ordinance authorizing their operations.

### **Proposed New Rule**

#### ***Amendment to Section 5.15 Local Ordinance Required, Presumption That The Application is Qualified to be Received by Agency; Information, Statements and Documents to be Furnished by Applicant.***

- A. A private club application may only be submitted to the Alcoholic Beverage Control after the governing body of the county or municipality in which the private club seeks to be located has issued an ordinance approving the private club to operate in that county or municipality. A private club application filed with and accepted by the ABC Division meeting the requirements of Section 5.14 of the Alcoholic Beverage Control Regulations and approved by local ordinance will be presumed to be a “qualified application” under the terms of ACA § 3-9-222(f). This presumption shall be met if the application is accompanied by the required documents listed in Subsection B. of this Regulation.
  
- B. In addition to such information as the Director may determine shall be furnished, the following information, statements and documents shall be given or made by an applicant for a private club permit and such application shall be verified under oath by the chairman of the board of directors or other governing body, the president and the secretary of said private club or the named managing agent of the non-profit corporation:
  - (1) The name, and residence of each consenting charter member of the club on the date of application and who is in good standing on the date of the application;
  - (2) The name, and address of each member of the board of directors or other governing body and each officer of the club;
  - (3) The premises to be permitted stating the street and number or such description of the premises and the character of the area surrounding the premises as will reasonably indicate the locality of the premises and will specifically designate and describe all areas on the premises of the club where controlled beverages will be dispensed and the consumption of such controlled beverages will be allowed;
  - (4) The applicant shall submit the description called for in Subsection (3) of this Regulation and a plot plan of the premises which shall clearly show the construction of the premises, including the dimensions thereof and the relation of the premises to surrounding structures;
  - (5) A detailed description of the non-profit purpose or objective of the club and a complete description of entertainment and/or other services offered by the club;

- (6) The amount assessed a member as dues, if any, at the time of said application for permit;
- (7) A copy of the minutes of the meeting of the governing board of the non-profit corporation which shows that the application for the private club permit is authorized by the organization's governing body;
- (8) A statement that the applicant is the owner of the premises for which the permit is sought or is the holder of an existing lease thereon. If the applicant is not the owner of the premises for which the permit is sought, the applicant must state the name of the owner of the premises and the names of any other persons holding a leasehold interest in the premises;
- (9) A statement that no member of the board of directors or other governing body nor any of the officers of the club has been under the sentence, whether suspended or otherwise, of any court for the conviction of a felony within two (2) years preceding the date of the application, that no member of the board of directors or other governing body nor any of the officers of the club has had a permit, license or registration issued to them under any alcoholic beverage control law or Regulation of the State of Arkansas revoked within five (5) years preceding the date of application and that all members of the board of directors or other governing body and all officers of the club are of good moral character;
- (10) A copy of the articles of incorporation, as filed-marked by the Arkansas Secretary of State's Office, and the by-laws of the private club shall be attached to the application;
- (11) If the premises are not owned by the applicant, a copy of the lease or other agreement for use of the premises shall be attached to the application; and
- (12) The applicant, in the application, must elect to operate under either the "locker system" or the "pool or revolving fund system" of operation.
- (13) ***Permit Not to be Issued to Unqualified Corporation;  
Repealed 8-17-05***

**MARK UP COPY**

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- A. A private club application may only be submitted to the Alcoholic Beverage Control after the governing body of the county or municipality in which the private club seeks to be located has issued an ordinance approving the private club to operate in that county or municipality. A private club application filed with and accepted by the ABC Division meeting the requirements of Section 5.14 of the Alcoholic Beverage Control Regulations and approved by local ordinance will be presumed to be a “qualified application” under the terms of ACA § 3-9-222(f). This presumption shall be met if the application is accompanied by the required documents listed in Subsection B. of this Regulation.
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  - (2) The name, and address of each member of the board of directors or other governing body and each officer of the club;
  - (3) The premises to be permitted stating the street and number or such description of the premises and the character of the area surrounding the premises as will reasonably indicate the locality of the premises and will specifically designate and describe all areas on the premises of the club where controlled beverages will be dispensed and the consumption of such controlled beverages will be allowed;
  - (4) The applicant shall submit the description called for in Subsection (3) of this Regulation and a plot plan of the premises which shall clearly show the construction of the premises, including the dimensions thereof and the relation of the premises to surrounding structures;
  - (5) A detailed description of the non-profit purpose or objective of the club and a complete description of entertainment and/or other services offered by the club;

- (6) The amount assessed a member as dues, if any, at the time of said application for permit;
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- (8) A statement that the applicant is the owner of the premises for which the permit is sought or is the holder of an existing lease thereon. If the applicant is not the owner of the premises for which the permit is sought, the applicant must state the name of the owner of the premises and the names of any other persons holding a leasehold interest in the premises;
- (9) A statement that no member of the board of directors or other governing body nor any of the officers of the club has been under the sentence, whether suspended or otherwise, of any court for the conviction of a felony within two (2) years preceding the date of the application, that no member of the board of directors or other governing body nor any of the officers of the club has had a permit, license or registration issued to them under any alcoholic beverage control law or Regulation of the State of Arkansas revoked within five (5) years preceding the date of application and that all members of the board of directors or other governing body and all officers of the club are of good moral character;
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- (13) ***Permit Not to be Issued to Unqualified Corporation;  
Repealed 8-17-05***

**SUMMARY**

Act 1112 of 2017 requires applicants for private club permits to obtain an ordinance from the municipality or county in which the club seeks to operate prior to filing an application with the ABC.

## **Proposed New Rule**

***Amendment to Section 5.50 Hotel or Large Event Facility Private Club Permit For "Dry" Areas Only.*** In addition to the requirements for an application for a regular private club permit, including an ordinance approving the operation of the private club by the governing body of the county or municipality in which the club is located, the applicant for a permit issued under this regulation must elect to apply as either a hotel or as a large event facility private club.

- (a) If application is being made for a hotel private club permit as authorized by Act 1194 of 2011, the application for the hotel permit must include, in addition to information already required for a private club application, a description of the hotel facility, which shows at a minimum that the hotel meets the following additional requirements:
  - (1) The space leased must have at least eighty (80) lodging rooms and five thousand (5000) square feet of public meeting, banquet or restaurant space that is leased to the nonprofit corporation;
  - (2) Additional areas, other than the bar area, in which the private club hotel applicant desires the ability to serve alcoholic beverages to members and their guests must be shown on a floor plan. Such additional areas may include sleeping rooms, poolside bars, banquet facilities, restaurants, lobbies, exhibit halls, patios and outdoor gardens.
  - (3) If the hotel desires to offer room service, either by the use of in-room hospitality units as authorized by Alcoholic Beverage Control Regulation Section 5.51 or by room service, the floor plan submitted must clearly identify those rooms which are leased by the nonprofit corporation.
  
- (b) Additional information or requirements for a large event facility under Act 1194 shall include the following:
  - (1) The large event facility must serve full and complete meals and food on the premises;
  - (2) The large event facility must have one (1) or more places for food service on the premises with a seating capacity for not fewer than five hundred (500) people, and must employ a sufficient number and kind of employees to serve meals and food on the premises capable of handling at least five hundred (500) people. However, the food service requirement and employee requirement may be supplied either through the large event facility permittee or through one or more independent contractors;

- (3) The large event facility may serve alcoholic beverages on the premises at one (1) or more places only on days complete meals and food are served at one (1) or more places on the premises;
  - (4) The large event facility applicant must show that the space leased has ten thousand (10,000) square feet of interior or exterior public meeting, banquet, exhibit hall or restaurant space;
  - (5) The applicant for the large event facility permit shall list, and show on its floor plan, all areas of the large event facility where alcoholic beverage service is being requested. This includes outdoor areas, exhibit halls, patios, lobbies, restaurants that may be within the large event facility and any other portion of the large event facility property where alcoholic beverage service is desired. Areas where alcoholic beverage service is desired must be leased by the nonprofit corporation that is making application for the private club permit;
  - (6) Attachments to the application must show that the large event facility permit will be a facility that will house convention center activity, tourism activity, trade show and product display and related meeting activity, or any other similar large meeting or attendance activity as required by Act 1194 of 2011.
- (c) The applicant for the hotel or the large event facility must show, on the floor plan, an entryway where members of the public may enter the property before they are offered the opportunity to become members of the nonprofit corporation. Both members of the public and members of the private club and bona fide guests of a member of the private club may freely move about the private club property, but only members and guests of a member of the nonprofit corporation may receive alcoholic beverage service from the private club. (Adopted 8-16-11)

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