

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Name of Department Department of Finance and Administration

Agency or Division Name Alcoholic Beverage Control Division

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person Doralee Chandler

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Contact Phone 501-682-1105

Name of Rule Microbrewery Restaurant Private Club - Rules 5.84-5.89

Newspaper Name Arkansas Democrat Gazette

Date of Publishing December 22, 2019 thru December 24, 2019

Final Date for Public Comment January 22, 2020

Location and Time of Public Meeting 1515 West 7th Street, 5th Floor, 9:00 a.m.

MARKUP COPY

SUBTITLE H - OPERATION OF MICROBREWERY-RESTAURANT PRIVATE CLUB

Section 5.84 A microbrewery-restaurant private club applicant shall be an entity organized and existing under the laws of this state before applying for a microbrewery-restaurant private club. The net revenues of the microbrewery-restaurant private club shall not directly or indirectly benefit its members[CL1], except for the payment of bona fide expenses of the microbrewery-restaurant private club's operations. Activities at the microbrewery-restaurant private club shall be conducted for some common recreational, social, patriotic, political, national, benevolent, athletic, community hospitality, professional association, entertainment, or other object or purpose and not solely for the consumption of alcoholic beverages. At the time of application for a microbrewery-restaurant private club permit, the entity shall own or lease, be the holder of a buy-sell agreement or offer and acceptance, or have an option to lease a building, property, or space for the reasonable comfort and accommodation of its members and the families and guests of its members. The microbrewery-restaurant private club shall restrict the use of club facilities to its members and the families and guests of its members. For purposes of the microbrewery-restaurant private club, a person is a member of the *microbrewery-restaurant private club only upon ordering an alcoholic beverage*. If the entity holding a microbrewery-restaurant private club permit additionally holds another alcoholic beverage permit, the hours of operation authorized for the microbrewery-restaurant private club applies to all permits of the entity.

Section 5.85 Procedure for Obtaining Permit[CL2]. A microbrewery-restaurant private club applicant may apply to obtain a microbrewery-restaurant private club through the procedures provided under Section 5.15 and Section 1.20. The application for a microbrewery-restaurant private club shall be submitted to the division and accompanied by an annual permit fee of one thousand five hundred dollars (\$1,500). In an area in which the sale of alcoholic beverages is not authorized by local option under § 3-8-201 *et seq.*, the application for a microbrewery-restaurant private club permit shall be accompanied by an additional application fee of one thousand five hundred dollars (\$1,500). The director may issue a permit as authorized in this section upon determination that the applicant is qualified and that the application is in the public interest.

The Director may issue a microbrewery-restaurant private club permit if the microbrewery-restaurant private club premises are in a dry area and the governing body has approved an applicant.

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

Section 5.85.1 Reapplication An entity denied a microbrewery-restaurant private club permit may reapply with ABC for a permit, pursuant to Section 1.30 of these Rules.

Section 5.86 Permit Scope and^[CL3] Restrictions. The Director of the Alcoholic Beverage Control Division may issue a microbrewery-restaurant private club permit that authorizes the permittee to:

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

Store beer, malt beverage, and hard cider manufactured by the microbrewery-restaurant private club and any other beer, malt beverage, and hard cider that the microbrewery-restaurant private club permittee may purchase from retailers and small brewers permitted by this state on the microbrewery-restaurant private club permitted premises and on the premises of the one (1) separate brewing facility of a microbrewery-restaurant private club.

Two (2) or more microbrewery-restaurant private clubs sharing common ownership or a brewery of any size sharing common ownership with a microbrewery-restaurant private club shall be considered one (1) entity for purposes of: calculating barrel production; and the transportation of beer, malt beverage, or hard cider produced by one (1) entity among no more than three (3) microbrewery-restaurant private clubs of the one (1) entity; Operate a restaurant that is the sales outlet for beer, malt beverage, or hard cider manufactured by the microbrewery-restaurant private club and that sells the beer, malt beverage, or hard cider and any other beer, malt beverage, hard cider, or wine that the microbrewery-restaurant private club permittee may purchase from retailers permitted by this state for consumption on the permitted premises or purchased directly from permitted small brewers allowed to distribute directly to the microbrewery-restaurant private club; Sell on the premises beer, malt beverage, or hard cider manufactured by the microbrewery-restaurant private club or commonly owned facility to a member for on-premises consumption during legal operating hours

Serve to a member on-premises complimentary samples of beer, malt beverages, or hard cider produced by the microbrewery-restaurant private club

Sell beer, malt beverage, or hard cider of its own manufacture to a wholesale dealer permitted by this state for the purpose of resale to other retail permit holders.

Section 5.87 Tastings. A microbrewery-restaurant private club may conduct beer-tasting, malt beverage-tasting, and hard cider-tasting events for educational or promotional purposes at any location in wet areas of this state if:

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

(iii) Written notice is given by the division to the permit holder at least five (5) days before the event.

The microbrewery-restaurant private club shall use only beer, malt beverage, and hard cider produced by the microbrewery-restaurant private club for an event approved.

This section does not authorize the conducting of a beer-tasting, malt beverage-tasting, and hard cider-tasting event at a separate brewing facility of a microbrewery-restaurant private club

Section 5.88 Separate Facility Authorized. A microbrewery-restaurant private club may maintain one (1) separate brewing facility for the production or storage of beer, malt liquor, and hard cider as needed to meet demand, except that each facility used by the microbrewery-restaurant private club permittee shall not in the aggregate produce more than forty-five thousand (45,000) barrels of beer, malt beverage, and hard cider per year.

Beer, malt beverage, and hard cider produced by a separate brewing facility of a microbrewery-restaurant private club permittee shall be:

(i) Sold to a permitted wholesaler; or

(ii) Transported:

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

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

5.87 Prohibited Sales A microbrewery private club may not sell alcoholic beverages to nonmembers. A microbrewery private club shall not sell alcoholic beverages for off-premise consumption. Violation of this provision will result in the permit being revoked.

SUMMARY OF SUBSTANTIVE CHANGES

Act 681 establishes the Microbrewery-restaurant Private Club Permit. Subtitle H has been added to Title 5 of the ABC Rules to incorporate this Act.

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FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT DFA

DIVISION Alcoholic Beverage Control

PERSON COMPLETING THIS STATEMENT Doralee Chandler

TELEPHONE 501-682-2916 **FAX** 501-682-2221 **EMAIL:** Doralee.Chandler@dfa.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Operation of Microbrewery-Restaurant Private Club

- 1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No
- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost:

(b) The reason for adoption of the more costly rule:

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and:

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following: N/A

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total unknown

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total unknown

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total 0 _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total 0 _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ unknown

Next Fiscal Year

\$ unknown

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 0

Next Fiscal Year

\$ 0

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.