

006.02.11-002



STATE OF ARKANSAS
ALCOHOLIC BEVERAGE CONTROL DIVISION

1515 West 7th Street, Suite 503
Little Rock, Arkansas 72201
Telephone (501) 682-1105
Fax (501) 682-2221

Michael W. Langley
Director

Donald R. Bennett
Attorney

Milton R. Lueken
Attorney

BOARD MEMBERS:

Thomas P. Powell, Jr., Chairman
Ron Fuller
Tony Ellis
Jean Hervey
Martin B. Silverfield

December 20, 2011

Jon Davidson
Arkansas Register
State Capitol Building
Room 026
Little Rock, Arkansas

Dear Mr. Davidson:

Enclosed please find regulations to be filed with the Secretary of State which were adopted by the Alcoholic Beverage Control Board on August 16, 2011.

If you should have any questions, please contact me.

Very truly yours,

Milton Lueken, Attorney
Alcoholic Beverage Control Division

ML\kb

Enclosure

BY _____
MARK MARTIN
SECRETARY OF STATE
STATE OF ARKANSAS
11 DEC 20 PM 3:58
FILED
AT REGISTER DIV.

Section 1.19(14) Liquor Manufacturer Permit authorizes the manufacture of and the sale of spirituous, vinous and malt liquor beverages, under the following **circumstances**:

- (1) Sell, deliver, or transport to wholesalers;
- (2) Sell, deliver, or transport to rectifiers;
- (3) Export out of the state; and
- (4) Sell for off premises consumption spirituous liquors the distiller or manufacture manufacturers on any day of the week.

Section 1.19(40) Retail Native Beer Permit authorizes the permit holder to sell at retail beer produced by an Arkansas Native Brewer as defined at ACA 3-5-1403(2) and to sell malt liquor produced by an Arkansas Native Brewer as defined at ACA 3-5-1403(6). The native beer and native malt liquor may be sold for consumption either on or off the premises.

~~**Section 1.19(40) Native Brewery Permit** authorizes the permit holder to operate a small brewery or a microbrewery restaurant in the manner provided for by Act 1805 of 2003, as amended. (Amended 8-19-09)~~

Section 1.19(44) Hotel or Large Event Facility Private Club permit

authorizes the on premises consumption of all types of alcoholic beverages. This permit carries greater privileges than the on premises consumption private club permit described at Arkansas ABC Reg. 1.19(12). This permit may only be issued to a qualified establishment in a "dry" area and the permit will allow expanded service of alcoholic beverages at hotel properties and at a large event facility. Authorization for the new permit is under Act 1194 of 2011.

Section 1.51 Appeal by Person Aggrieved by Order of Director. Any applicant or permittee aggrieved by an Order of cancellation, denial, suspension, revocation, or the imposition of a money fine by the Director, or any person or group of persons who have formally protested the issuance of any permit before a decision was rendered by the Director and are aggrieved by the issuance of such permit, may appeal from such Order to the Alcoholic Beverage Control Board by filing a notice of appeal with the Board. The notice of appeal must be mailed or delivered to the offices of the Alcoholic Beverage Control Division within fifteen (15) days after the Order to be appealed from was received by the recipient, as shown by the Certified Mail Return Receipt card returned to the Alcoholic Beverage Control Division. In the event the person filing an appeal of the Director's Decision or Order was not sent a certified letter of the same, then the fifteen (15) day appeal period begins on the date the Director's Decision or Order was issued. The notice of appeal shall designate the name of the permittee or applicant.

At least ten (10) days before the time set for the hearing the Alcoholic Beverage Control Division shall notify the applicant, permittee, or protestor of the time and place where said appeal shall be heard by the Board or by a Hearing Officer designated as provided in this article. Such notice to the applicant, permittee or protestor shall be mailed by regular first class mail. Said hearing shall be held within at least sixty (60) days after the date of the filing of the notice of appeal unless the person appealing shall consent to a later hearing. No request for a continuance of a Board hearing made after the Friday before a scheduled Board hearing will be considered by the Director, absent emergency circumstances, the determination of which is vested in the discretion of the Director.

Section 1.79(33) Allowing Possession of Weapons on Premises. That the permittee, or any employee of the permittee, allowed, or knew, or reasonably should have known, that any person without a possessory or proprietary interest in the permitted outlet was in possession of a weapon on the permitted premises. As used in this Regulations, "weapon" means any firearm that is designed, made, or adapted to be fired, or any knife or club as defined by ACA § 5-73-120. Any weapon authorized to be in the permitted outlet pursuant to this Regulation must be kept out of sight and inaccessible to patrons and others who have no legal right to possess a weapon in the outlet. This Regulation excludes any law enforcement officer, any duly authorized agent of the Alcoholic Beverage Control Enforcement Division, and any licensed security guard, while acting in the course and scope of their official duties. **Provided,** that any person with a permit issued by the Director of the Arkansas State Police may carry a concealed handgun, as such is defined in ACA § 5-73-301 into a restaurant, as such as defined in ACA § 3-9-202(8).

Section 2.19 Labels and Size of Containers to be Approved by Director.

The contents of all labels affixed to containers of controlled beverages and the size and combination of such containers shall be approved by the Director. In no event shall any label or design be approved by the Director which contains any statement, design, device or representation which is obscene or indecent. Any Primary American Source (PAS) submitting a brand registration to the agency for distribution of a product shall, in addition to all other requirements, submit to the Alcoholic Beverage Control Division a copy of the Alcohol and Tobacco Tax and Trade Bureau (TTB) Certificate of Label Approval (COLA) or a Certificate of Exemption from label approval. Any PAS that wishes to register a product for sale where the PAS has obtained a Certificate of Exemption from the TTB shall certify to the Director that the labels will still comply with TTB labeling criteria as found in the "Federal Alcohol Administration Act" Title 27 CFR Subchapter A – Liquors, Part 4, Subpart D, Section 4.39, Part 5, Subpart D, Section 5.42, Part 7, Subpart C, Section 7.29. In no instance shall permitted containers of spirituous beverages be less than one hundred (100) ml, vinous beverages or wine be less than one hundred eighty-seven (187) ml or beer or malt liquor be less than one hundred sixty-nine (169) ms or five and seventy-five hundredths (5.75) ounces.

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.

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.

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 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;

Section 2.28(10) Wholesalers Furnishing Outside Signs to Retailers Governed by Federal Regulations. Notwithstanding the provisions of Section 2.28(4) of these Regulations, the Federal Regulations governing the furnishing of outside signs to retailers by wholesalers are hereby adopted by reference and incorporated herein; Further, any outdoor sign provided by an industry member shall only contain information regarding products sold to the retail outlet by the industry member. The retail outlets agree, as consideration for receiving the advertising banner, that said outlets will not customize or otherwise edit, add to or delete from the sign furnished by the industry member. All employees or agents of the industry member providing the signs are prohibited from erecting any temporary signs for the retail outlet.

It shall not be considered a violation for the industry member to provide a sign to a retail outlet containing the name of the outlet and "Grand Opening" so long as it is not displayed at the outlet for more than twenty-one (21) days.

Section 3.19(2) Samples Prohibited. The permittee or any agent, servant or employee of the permittee accepted from any person or sold or gave to any person any samples, either in unbroken packages, partial packages, or by the drink; this provision is applicable to private clubs, and all holders of retail permits. Provided, retail liquor stores may offer samples of intoxicating liquors of all kinds pursuant to permit as authorized by Act 455 of 2007. Further, retail permit holders may give controlled beverages to charitable or non-profit organizations for non-profit functions held in "wet" areas of the State and where such functions do not occur on a permitted premises of a permittee of this agency. Provided further, that holders of large attendance facility permits in which pairmutuel wagering has been authorized by law may offer samples of alcoholic beverages by the drink to patrons who are in that area of the permitted facility where games of skill are housed. Provided further, that holders of permits in hotels and holders of private club permits that own or lease space within a hotel building may offer samples of alcoholic beverages by the drink to registered guests of the hotel as part of a manager's reception. All such samples offered shall be subject to the gross receipts and use taxes as a withdrawal from stock and shall be paid by the permit holder in the manner prescribed by law.

Section 3.19(5) Sale of Controlled Beverages for Other Than Cash, Check, or Nationally Recognized Credit Card Prohibited - Gift Certificates Allowed.

The permittee or any employee, agent or servant of the permittee sold or dispensed any controlled beverages for any consideration other than cash, nationally recognized credit card, or check dated the same day as the sale. Nationally recognized credit card shall mean, but is not limited to VISA, Mastercard, American Express, Diners Club, Carte Blanche, Discover, major oil company credit cards, or others of the same nature and type. Further, any permittee may sell gift certificates or gift cards to any person permitted by these Regulations which may be redeemed for alcoholic beverages on a subsequent date by any person permitted by these Regulations.

It is further provided that any permittee that offers gifts certificates or gift cards shall receive full payment for the same at the time the gift card or gift certificate is sold to any person. Payment shall be made for the gift card in the same manner as if alcoholic beverages were being purchased at that time. Only cash, credit card or check dated the same date as the date of sale may be used for payment for the gift card or gift certificate. Gift cards or gift certificates may not be bartered or exchanged to any other person to be used as payment for any obligations owed by the permittee. If it is found that a permittee is paying its advertising bills or other such obligations with gift cards or gift certificates being given as payment or partial payment for the debt owed by the permittee, then redemption of the gift card or gift certificate, where the item has been sold by the third party for a price less than the face value of the gift certificate or gift card, will be deemed to be a merchandising discount program and will constitute a violation against the retailer under the provisions of Arkansas ABC Regulations 3.19(5).

Section 3.19(10) Employment of Certain Persons Prohibited. The permittee knowingly had in his employment any person who is not qualified by reason of these Regulations or by reason of any alcoholic beverage control law of the State of Arkansas for the position to which such person was employed, including but not limited to, any of the following persons:

B. **Persons Under Twenty-One (21); Exceptions.** Any person less than twenty-one (21) years of age in the mixing, serving, selling or handling of controlled beverages. **Provided**, that nothing in this Regulation shall prohibit a minor eighteen (18) years of age or older to be employed as a musician or entertainer or to be employed in the preparation or serving of food or in the housekeeping department of any establishment permitted by this Agency; and nothing in this Regulation shall prohibit a minor eighteen (18) years of age or older, with the written consent of a parent or guardian, to be employed in the sale of beer and small farm wine at retail grocery establishments, nor from being employed by permitted liquor and beer wholesalers and by permitted small farm wineries to handle alcoholic beverages at the place of business of the permitted wholesaler or winery; and further, nothing in this Regulation shall prohibit a minor of any age to be employed as an entertainer when the minor and his parent or guardian perform together as part of the same show and the parent or guardian remains with the minor in a supervisory capacity. **Provided** further, minors sixteen (16) and seventeen (17) years of age may be employed at those permitted outlets that qualify as retail grocery establishments, but may not handle alcoholic beverages.

For purposes of this Regulation, retail grocery establishments shall not include those establishments engaged in the sale of motor fuels which do not maintain an inventory of human consumables (not including alcoholic beverage products) in an amount in excess of fifty thousand dollars (\$50,000). The burden of providing this inventory requirement shall be on the permittee.

In accordance with Act 1807 of 2003, any person or organization which holds a public restaurant mixed drink permit, a public hotel-motel-restaurant mixed drink permit, a restaurant wine permit or a Sunday beverage permit, may employ persons 19 years of age or older, who have the written consent of a parent or guardian, to sell and handle alcoholic beverages. **Provided**, that persons 19 years of age and older may not act as bartenders but they may otherwise open bottles of wine and beer and serve the alcoholic beverages and take payment for the same.

~~Section 4.17 Failure to Maintain Food Service Sales Ratio.~~ Any business that has received a Sunday alcoholic beverage permit shall maintain the food sales ratio as called for in Act 766 of 1987 and defined therein for the respective permits. Any business that fails to maintain the ratio shall have its permit suspended, cancelled, or revoked. Establishments that hold a permit must certify on an annual basis that they continue to meet the above code provision requirement. Such certification shall accompany the business' annual renewal application, and shall cover all of the business' operations for the previous calendar year, or such portion thereof that the business has held a Sunday alcoholic beverage permit. (Amended 9-19-01)

Section 5.17.2 Private Club Restaurant Operations. Those private clubs which are held out to this agency as food service establishments must maintain food service operations on the permitted premises that meet the requirements for restaurants as defined in Section 4.6 of these regulations. Further, kitchen facilities in those private clubs must remain open and serve food at all times alcoholic beverages are served on the permitted premises.

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 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.

Section 5.51 Hotel or Motel In-Room Hospitality Units for “Dry” Area Hotels or Motels under Act 1194 of 2011 A nonprofit corporation private club permittee which leases a space or spaces within a hotel or motel building, including sleeping room areas, which meets the requirements of Act 1194 of 2011, may dispense alcoholic beverages for on premises consumption only in sealed containers from an in-room hospitality unit located in any sleeping room of the permitted hotel or motel leased by the not for profit corporation permit holder and which is occupied by qualified persons. For purposes of this Regulation, qualified persons are defined as members or bona fide guests of a member of the private club, all of whom are twenty-one (21) years of age or older.

In-room hospitality unit [“unit”] is defined as a closed container, refrigerated or non-refrigerated, access to the interior of which is restricted by means of a locking device under the control of hotel management. Each such unit shall have permanently affixed thereto a sign that informs the qualified members or guests of the private club of the legal hours the unit may be accessed, such hours to correspond to state or local laws regarding the dispensing of alcoholic beverages. The unit herein described must meet such requirements as set forth by the Director and, further, must be approved by the Director in writing before dispensing commences from such unit:

An in-room hospitality unit may be stocked or inventoried only by private club employees who are twenty-one (21) years of age or older and only during the hours legally prescribed by law for the dispensing of alcoholic beverages at the private club. The following sizes and quantities of alcoholic beverages are authorized to be placed in and dispensed from an in-room hospitality unit:

- (1) Wine and vinous beverage in 187 ml. containers with no more than a total of eight (8) containers per hospitality unit; and
- (2) Malt beverages, including both beer and malt liquor, in 12 oz. or less containers with no more than a total of eight (8) containers per hospitality unit; however, no malt beverage container shall be less than 200 ml or 6.8 oz. in size; and
- (3) Upon written approval by the Director, distilled spirits may be dispensed only in 100 ml. or less size containers. Any container size less than 100 ml. is specifically an exemption from the provisions of Section 2.19 of these Regulations, and may only be dispensed in such in-room hospitality units. No more than a total of fourteen (14) of such distilled spirits containers may be maintained in each hospitality unit. Based on the container size approval, the Director shall determine the appropriate number of containers allowed in the in-room hospitality unit. The private club permittee shall remain accountable under applicable law and regulations for dispensing from the in-room hospitality unit the same as if such were made from any other point from within the establishment; and
- (4) The private club permittee at the hotel or motel, on property leased by the private club permittee, may also offer room service of alcoholic beverages during legal hours of the dispensing of alcoholic beverages as set by state or

local law. Room service of alcoholic beverages may not be offered to any sleeping room if the room is solely occupied by persons under the age of twenty-one (21).