

Section 5.56 Sale of Membership to Applicant at the Time of Entry Into Club – Application for Membership Only Required When Distilled Spirits Drink or Beverage Made from Distilled Spirits Product is Ordered – Optional “New Member Discount”. Any private club permittee located within a wet area, under the terms of Act 1371 of 1999, as applies to the dispensing or consumption of alcoholic beverages, shall require a person to become a member of the private club only when that person orders a distilled spirits drink or a beverage made from distilled spirits products. No membership application is required. No “guest” status (for the purpose of ordering a distilled spirits drink), as provided for private clubs in dry areas, is allowed. **Provided,** private clubs may elect, upon written notice to this agency, to operate the private club in accordance with the regulations promulgated by this agency prior to the passage of Act 1371 of 1999.

To satisfy the statutory requirements for membership, a fee of not less than \$5.00 must be assessed each person joining the private club. On the same date that a person joins the private club, the private club permittee may issue a credit of up to \$5.00 against the purchases and charges assessed to the new member as a “new member discount”. However, the permittee shall compute and remit to the Director of the Department of Finance and Administration the gross receipts tax, supplemental mixed drink tax and all other applicable taxes on the total charge to the new member for alcoholic beverages, membership fee and other purchases without regard to the optional \$5.00 discount. The discount, if allowed, shall be subtracted from the sum of the applicable taxes and all purchases by the member.

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

Section 1.79(27) *Allowing Alcoholic Beverages to be Carried From Any On Premises Alcoholic Beverage Outlet or Private Club.* The permittee allowed any patron to exit the permitted premises carrying any open container of alcoholic beverages or allowed any patron to exit any on premises retail beer outlet carrying sealed alcoholic beverages in any combination not authorized by the Director for off premises sales. Private clubs and hotel-motel-restaurant mixed drink permitted outlets are not allowed to sell any alcoholic beverages to be taken off the permitted premises. ***Provided,*** (1) those establishments holding an on premises wine restaurant or café permit, hotel-motel-restaurant mixed drink permit, or private club permit, may allow a customer, who purchases an unsealed package of wine in conjunction with a food purchase and consumes a portion of the wine on the premises with the meal, to replace the cork and remove the partially filled package from the premises and (2) patrons may walk back and forth with an alcoholic beverage between a private club permitted premises and another contiguous permitted premises when both premises are a part of the same business operation and the alcoholic beverage is a type permitted by both premises.

Section 1.79(19) *Consuming Controlled Beverages While on Duty.* The permittee or any agent, servant or employee consumed alcoholic beverages or was under the influence of alcoholic beverages while on duty on the permitted premises. “Duty” shall include the sale or service of alcoholic beverages and/or crowd control. In determining whether the permittee or any agent, server or employee is otherwise on duty the Director or Board may consider, among other factors, the size of the permitted establishment, the number of employees working at the time, and whether the permittee has a manager on the premises.

Section 1.79(32) *Failure to be a Good Neighbor.* The policy of the Arkansas General Assembly, per Act 695 of 1989, and the ABC Board, which is empowered to adopt Regulations thereunder, is that every holder of an ABC license shall be held to a high duty of care and will operate their business where beverages are sold or dispensed in a manner which is in the public interest and which does not endanger the public health, welfare, or safety. Failure to maintain this duty of care shall be a violation of the Act and shall constitute grounds for the application of the full range of administrative sanctions and penalties against the subject license.

Any inquiry made under the provisions of this Regulation or Act 695 of 1989 shall be whether or not the outlet, as operated, promotes the public convenience and advantage or whether continuation of the operation of the outlet would promote the public interest and whether or not the outlet's operation endangers the public health, welfare, or safety in the area of a community in which it is located. It is specifically provided that during any hearing called under the provisions of this Regulation or the aforementioned Act the permitted outlet may be viewed as if it were a new application and all factors involved in the processing of the application may be re-determined as if the application was being made for the first time.

In addition to all factors which may be used on an initial application, inquiry may be made upon the control, or lack thereof, that the permittee exercises over parking lots and other areas adjacent to the permitted outlet which are under the direct control of the permittee. In addition, the permittee may be held accountable under this Section for disorderly conduct and for excessive noise or loud music from his outlet and which is of such volume and such degree as to constitute a disturbance of the peace.

Section 3.19(3) Closing Hours. The permittee or any agent, servant or employee of the permittee sold, offered for sale, dispensed, gave away or allowed the consumption of any controlled beverages at any time prohibited by law, including the following:

- A. Sundays, Mondays between 12:00 a.m. and 1:00 a.m., or on any other days between the hours of 1:00 a.m. and 7:00 a.m.
Provided, that this Regulation shall not conflict with the ordinance of any city or town. In addition, the governing body of any city or town may fix later closing hours for the permitted premises of a hotel or restaurant which in no event shall be later than two (2) hours after midnight on Saturday night;
(Amended 7-19-95)

It is further provided that any establishment which has a Sunday alcoholic beverage permit as authorized by law shall be able to sell alcoholic beverages and allow the possession and consumption thereof on a Sunday between the hours of 12:00 noon and 10:00 p.m., or within a lesser period of time as authorized by city or county ordinance. It is further provided that if a city or county has held an election under the provisions of Act 857 of 1999, legalizing the sale of alcoholic beverages on a Sunday by all permittees located within their jurisdiction, then such retail sales shall be lawful between the hours of 12:00 noon and 10:00 p.m., or within a lesser period of time as authorized by city or county ordinance. (Amended 8-18-99)

It is further provided that when Sunday falls on December 31st of any year, such Sunday alcoholic beverage permit holder, or any on premises consumption permit holder in an area that has opted for the sale of alcoholic beverages on Sunday, may sell alcoholic beverages for on premises consumption between the hours of 12:00 noon on Sunday and 2:00 a.m. on the following Monday unless the city or county establishes by ordinance a lesser period of time in which alcoholic beverages may be sold for on premises consumption by restaurants and hotels on New Year's Eve.

- B. Christmas Day;
- C. Deleted 12-15-89
- D. Under the provisions of Act 305 of 1999, if a permittee is cited by a local jurisdiction for operating during hours prohibited by local city ordinance or by local county quorum court ordinance, and if such hours of operation for which the permittee is cited are more restrictive than the general hours of operations established by the ABC Division or by the Arkansas General Assembly for a retail or private club permit, then such violation shall only be heard by a local court of competent jurisdiction and such violation shall not be considered to be an administrative violation against the permit issued by the ABC Division. (Adopted 8-18-99)

Section 3.19(10)A. *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;

- A. ***A Person Convicted of Certain Laws.*** Any person in the serving or mixing of controlled beverages, or in the dispensing of alcoholic beverages, the control of crowds or entrance to the permitted premises, or the management of the business or activities of the outlet who is a convicted felon whose felony conviction has not been pardoned or record not expunged. ***Provided,*** that those convicted felons whose felony conviction does not involve bodily harm or the threat thereof to another person or the use of a weapon, as such is defined in Section 1.79(33) of these Regulations, may be employed in an ABC off premises permitted outlet.

Section 1.32.1 Applicant Must Attend Educational Seminar. Any person who is applying for a retail alcoholic beverage license or private club license must attend an educational seminar offered by the ABC Division. Attendance at the seminar by the applicant shall be required prior to any action on the application by the Director. **Provided**, that such attendance is not required by those applicants who have held a permit prior to the initial adoption of Section 1.32.1 (8-17-88) and have continued to hold the permit to a point within twelve months of filing a new application for the same type permit.

Section 3.19(10)B. A Person 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 licensed 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 at retail grocery establishments, nor from being employed by licensed liquor and beer wholesalers and by licensed native wineries to handle alcoholic beverages at the place of business of the licensed 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.

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.

Section 1.33(7) *Repealed*

Section 1.33(8) Retail Wine Permit Not to be Issued to any Premises that is not a Restaurant Qualified to Hold Restaurant Wine Sales Permit. No permit for the sale of retail wine for off premises consumption shall be placed in a permitted premises for the sale of beer for on premises consumption, unless said establishment shall be a restaurant qualified to hold a restaurant wine sales permit. This Regulation will not be construed to restrict retail liquor permit holders sales of native wines under retail liquor permits or restrict the replacement of presently active retail wine permits.

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.

It is further provided that any business that received a temporary Sunday alcoholic beverage permit after January 1st of any year, under the provisions of Section 1.20(17) of these Regulations, shall not be required to furnish the above annual financial statement in order to renew their permit by June 30th of the same calendar year.

Section 1.79(25) *Employing a Convicted Felon.* The holder of any permit issued by this agency had in employment during any hours the outlet was open for business in any capacity a convicted felon whose felony conviction has not been pardoned or record not expunged whose duties include the sale, service, or dispensing of alcoholic beverages, the control of crowds or entrance to the permitted premises, or the management of the business or activities of the outlet; such prohibited employment shall include but not be limited to managers, bartenders, waiters/waitresses, bouncers, door persons, and cashiers. ***Provided,*** that those convicted felons whose felony conviction does not involve bodily harm or the threat thereof to another person or the use of a weapon, as such is defined in Section 1.79(33) of these Regulations, may be employed in an ABC off premises permitted outlet.

Section 1.19(33) *Bed and Breakfast Private Club Permit* authorizes a corporation, partnership, individual or limited liability corporation, whose primary function is to provide overnight accommodations to the public, not exceeding a total of twenty (20) guests rooms on the premises, whether operated by the business owner or not, where the owner or a person representing the owner lives on the premises, and where a breakfast meal is served to the lodging guests and where there is no restaurant on the premises open to the public except for the lodging guests, to serve beer and wine only to registered guests at the establishment.

Section 2.28(6) Samples Prohibited. That the manufacturer or wholesaler gave samples to any person, said samples being either in unbroken packages, partial packages or by the drink, except that a manufacturer or wholesaler may give a sample of distilled spirits, wine, or malt beverages to a retailer who has not previously purchased the brand from that manufacturer or wholesaler. No manufacturer or wholesale may give to any retail outlet more than three (3) gallons of any brand of malt beverage, 750 milliliters of any brand of distilled spirits, or three (3) liters of any brand of wine.

Further, a wholesaler may provide retail package store owners or employees with a small sample of any brand of wine or liquor not previously purchased by such retail package store, with such sample not to exceed one (1) ounce per owner or employee. Such samples shall be poured from bottles owned by such wholesaler, brought into the retail package store by such wholesaler or its employees, and removed from the retail package store premises immediately after the conclusion of any such sampling activity. Any sampling conducted by a wholesaler in accordance with this section shall not violate any other law or regulation prohibiting possession of an open container on the premises of a retail package store or violate any other law or regulation prohibiting an employee of a retail package store from drinking while on duty.

Sampling parties may not be given to retailers, consumers or prospective customers by manufacturers or wholesalers, except as permitted herein, without prior written approval of the Director under such restrictions or conditions as the Director may impose.

Manufacturer or wholesaler may give controlled beverages to charitable or non-profit organizations for on premises consumption only at non-profit functions where such organization receiving the beverages does not hold a permit to dispense alcoholic beverages, and further, where such function is held in a "wet" area of the State. The donation of alcoholic beverages by manufacturers or wholesalers may not occur on a "permitted premises" of a permittee of this agency. **Provided**, that in permitted areas of large attendance facilities which are owned or operated by public entities, such as municipalities or divisions of a municipality or county, or in public areas of hotel mixed drink permitted establishments which are not primarily used for the sale and service of alcoholic beverages (e.g., convention halls, ballrooms), a donation may be made by a manufacturer or wholesaler if the permittee at the large attendance facility or hotel mixed drink permitted establishment indicates that they have no objections to the donation being made on their permitted property. Under such circumstances, beer manufacturers or wholesalers will also be permitted to provide keg-tapping equipment and hook-up service to such charitable or non-profit organizations at any such function.

Section 1.19(27) *Microbrewery-Restaurant Distribution Permit* authorizes a microbrewery-restaurant licensee to sell beer or malt liquors of its own manufacture to a wholesale dealer for the purposes of resale to retail licensees in Arkansas under the three-tier system of distribution. If a separate brewing facility is used to meet the demand for product, all product produced by any separate facility must be sold to a licensed wholesaler and cannot be used at the microbrewery-restaurant premises. In any event, the total aggregate brewing limitation for all such facilities shall be in the amount of five thousand (5000) barrels per calendar year. In addition, any holder of a microbrewery-restaurant distribution permit may transport and ship its beer and malt liquor by appropriate means for delivery outside the State of Arkansas to business entities licensed and qualified to accept such products in their respective states.

Section 5.48 Hours of Dispensing of Alcoholic Beverages in Private Clubs; Class A Private Club Permit Defined; Class B Private Club Permit Defined; Imposition of More Restrictive Hours of Operation as a Sanction for a Violation; Prohibition Against Transfer of Class B Private Club Permit; and More Restrictive Hours of Operations by Local Governments.

(a)(1) Private club permits which are classified as a Class A private club permits as well as all new private club permits issued by the ABC Division shall be allowed to dispense alcoholic beverages and to allow the possession and consumption of alcoholic beverages on the permitted premises beginning at 7:00 a.m. of a day and ending by 2:00 a.m. of the following day.

(2) No new private club permit shall be issued nor any existing Class A private club permit changed to allow the dispensing, consumption or possession of alcoholic beverages on the permitted premises from 2:00 a.m. until 7:00 a.m. daily.

(b) The Director, or the Board on appeal, in their discretion, is empowered to impose more restrictive hours of operation as a sanction for violation of any ABC law or Regulation.

(c) If any member, guest, employee, agent, or servant of the private club shall dispense, consume, or allow the possession of alcoholic beverages on the permitted premises during the prohibited hours, such action may result in a hearing against the permit and the levying of a fine and/or the suspension, revocation, or cancellation of the permit.

(d)(1) Those permitted establishments which have received a Class B certificate from the ABC Division classifying them as a Class B private club shall be allowed to dispense alcoholic beverages and to allow the possession and consumption of alcoholic beverages on the permitted premises between the hours of 10:00 a.m. of a day and ending by 5:00 a.m. of the following day.

(2) No transfer of location application shall be allowed on any Class B private club permit to move the permit to another county.

(e)(1) The ABC Board recognizes that cities or counties may desire to impose more restrictive hours of operation on private club permittees within their jurisdiction than is provided for by the Class A or Class B private club permits. Further, it has never been the intention of the ABC Board, by the passage of prior versions of Section 5.48 of the ABC Regulations, formerly numbered Section 5.47, to preempt the authority of cities or counties in this regard that was granted to them in the case of *Tompos vs. City of Fayetteville*, decided in 1983.

(2) Cities and counties are recognized to be empowered to provide, by ordinance, hours of operation that are more restrictive in nature than provided for by the Class A or Class B permit structure issued by this agency. However,

in accordance with Ark. Code Ann. § 3-4-407, any violation of more restrictive hours of operation provided for by city or county ordinance will not be considered a violation against the permit issued by this agency.

Section 5.31 *Dispensing Controlled Beverages to or Consumption by Non-member/Non-guest Prohibited.* No private club shall allow the dispensing or consumption of controlled beverages on the premises of the club to or by any person other than a bona fide member of the club, one of such member's family or a bona fide guest of a member of the club.

A private club may serve alcoholic beverages on a golf course on which the private club is located and which is controlled by the private club when the private club is hosting a professional golf tournament or other charitable golf tournament, either of which is sponsored by a charitable organization as described in §501(c)(3) of the Federal Internal Revenue Code and the Director has been notified by the private club at least sixty (60) calendar days prior to the beginning of the event. Persons who attend such event, either as spectators or as participants, shall be deemed to be guests of the private club and the private club may serve alcoholic beverages to the guests for cash.

Section 2.5.1 “Microbrewery-Restaurant” means any establishment in which beer is both brewed and sold at retail in a restaurant setting under the same ownership in the same building or attached buildings. The operation of the microbrewery-restaurant shall be a limited exception to the three-tier system as defined in other parts of these Regulations. A microbrewery-restaurant establishment shall be allowed to brew beer or other malt beverage products, as defined in Ark. Code Ann. § 3-5-1202, and such beer or malt beverage products may be brewed in one or more varieties to be served in the restaurant operated at the same premises. The microbrewery-restaurant shall be limited to a production of 5000 barrels of malt beverage products per year, with each barrel having a volume of thirty-one (31) gallons. The beer or malt beverage brewed at the microbrewery operation shall only be sold at the restaurant maintained at the same premises, as defined in Act 611 of 1991 and shall be dispensed at such restaurant for on premises consumption only. The restaurant may purchase beer from other manufacturers of beer as set forth in that Act for sale and dispensing at the restaurant operation.

Section 1.33(6) Permits Not To Be Issued To Premises Within The Following Stated Distances From Church Or School Building. No permit for the sale or dispensing of alcoholic beverages shall be issued nor any existing permit transferred to any location within the following prohibited distances of any church or school building, such distances to be calculated based upon the existence of the church or school building at the time the application is accepted by the agency for processing:

- A. **Retail Liquor Permit.** One thousand (1000) feet to be measured from the nearest point of the church or school building to the nearest point of the building sought to be permitted.

- B. **Off Premises Retail Beer Permit to be Issued to Package Liquor Outlet.** One thousand (1000) feet to be measured from nearest point of church or school building to the nearest point of building sought to be permitted.

- C. **Exception for Retail Liquor Store Outlets Which are Within One Thousand Feet of a Church or School Building on the Date of August 13, 2001.** As an exception to subdivisions A & B of this subsection, if any retail liquor business in this state already exists within one thousand (1000) feet of one or more churches or school buildings on August 13, 2001, then that same retail liquor store may be allowed to transfer to a new location that is within one thousand (1000) feet of the closest church or school building to the present liquor store, but not within 600 feet of any church or school building, if the new location is determined by the Alcoholic Beverage Control Division to serve the public convenience and advantage.

Section 5.56 Sale of Membership to Applicant at the Time of Entry Into Club – Application for Membership Only Required When Distilled Spirits Drink or Beverage Made from Distilled Spirits Product is Ordered – Optional “New Member Discount”. Any private club permittee located within a wet area, under the terms of Act 1371 of 1999, as applies to the dispensing or consumption of alcoholic beverages, shall require a person to become a member of the private club only when that person orders a distilled spirits drink or a beverage made from distilled spirits products. No membership application is required. No “guest” status (for the purpose of ordering a distilled spirits drink), as provided for private clubs in dry areas, is allowed. **Provided,** private clubs may elect, upon written notice to this agency, to operate the private club in accordance with the regulations promulgated by this agency prior to the passage of Act 1371 of 1999.

To satisfy the statutory requirements for membership, a fee of not less than \$5.00 must be assessed each person joining the private club. On the same date that a person joins the private club, the private club permittee may issue a credit of up to \$5.00 against the purchases and charges assessed to the new member as a “new member discount”. However, the permittee shall compute and remit to the Director of the Department of Finance and Administration the gross receipts tax, supplemental mixed drink tax and all other applicable taxes on the total charge to the new member for alcoholic beverages, membership fee and other purchases without regard to the optional \$5.00 discount. The discount, if allowed, shall be subtracted from the sum of the applicable taxes and all purchases by the member.

Section 3.19(10)A. *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;

- A. ***A Person Convicted of Certain Laws.*** Any person in the serving or mixing of controlled beverages, or in the dispensing of alcoholic beverages, the control of crowds or entrance to the permitted premises, or the management of the business or activities of the outlet who is a convicted felon whose felony conviction has not been pardoned or record not expunged. ***Provided,*** that those convicted felons whose felony conviction does not involve bodily harm or the threat thereof to another person or the use of a weapon, as such is defined in Section 1.79(33) of these Regulations, may be employed in an ABC off premises permitted outlet.

Section 2.28(13) Advertising and Promotion Materials; Exception for Racing Facilities. As an exception to Section 2.28(4) of these Regulations, any manufacturer or wholesaler may pay for the display or other presentation of advertising and promotion materials on or about the premises of the holder of a franchise granted by the Arkansas Racing Commission.