

State of Arkansas
92nd General Assembly
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As Engrossed: H3/25/19

A Bill

HOUSE BILL 1852

By: Representatives Hawks, Magie

By: Senator K. Ingram

For An Act To Be Entitled

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

Subtitle

TO AMEND THE LAW REGARDING ALCOHOLIC BEVERAGES; TO AMEND PORTIONS OF THE LAW RESULTING FROM INITIATED ACT 1 OF 1942; AND TO ESTABLISH A MICROBREWERY-RESTAURANT PRIVATE CLUB PERMIT.

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

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

Subchapter 19 – Microbrewery-Restaurant Private Club Permit

3-5-1901. Definitions.

As used in this subchapter:

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

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

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



by volume;

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

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

(6) "Microbrewery" means a brewery that manufactures 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;

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

(A) Is both a microbrewery and a restaurant;

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

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

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

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

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

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

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

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

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

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

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

(a) 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 permit as prescribed in this subchapter.

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

(c) 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.

(d)(1) 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.

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

(e) For purposes of this subchapter, a person is a member of the microbrewery-restaurant private club only upon ordering an alcoholic beverage as defined in § 3-5-1901.

(f) 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.

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

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

(b)(1) 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).

(2) 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).

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

(2) The notice shall be:

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

(B) Verified.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) 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.

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

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

(1) 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;

(2)(A) 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 authorized under subdivision (a)(8) of this section.

(B) 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:

(i) Calculating barrel production; and

(ii) 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;

(3) 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;

(4) 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;

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

(6) 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 under §§ 3-4-605 and 3-5-101, dealing with wholesale distribution of beer, malt beverage, and hard cider;

(7)(A) 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.

(B) 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 under subdivision (a)(8)(A) of this section.

(C) Subdivision (a)(8)(A) of 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 authorized under subdivision (a)(9) of this section; and

(8)(A) 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.

(B) 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.

(b) 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 under § 3-5-1903.

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

(2) 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.

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

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

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

(2) Member for off-premises consumption.

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

3-5-1906. Fees and taxes.

A microbrewery-restaurant private club permittee shall:

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

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

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

for sale in the state.

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

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

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

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

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

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

3-5-1908. Collection of taxes.

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

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

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

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

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

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

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

/s/Hawks

APPROVED: 4/3/19