

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: S3/11/15
A Bill

SENATE BILL 646

By: Senator J. Hutchinson
By: Representative Sabin

For An Act To Be Entitled

AN ACT TO AMEND THE LAW REGARDING MICROBREWERY RESTAURANTS AND SMALL BREWERS; TO AUTHORIZE SMALL BREWERY SALES AT OFF-PREMISES RETAIL SITES; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW REGARDING MICROBREWERY RESTAURANTS AND *SMALL* BREWERS; TO AUTHORIZE SMALL BREWERY SALES AT OFF-PREMISES RETAIL SITES; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code § 3-5-205, concerning privilege taxes levied on businesses involved in the production and distribution of beer and light wine, is amended to add an additional subsection to read as follows:

(g) A microbrewery restaurant is exempt from this section.

SECTION 2. Arkansas Code § 3-5-1102(a)(12), concerning the definition of "supplier" for the beer wholesalers and suppliers law, is amended to read as follows:

(12)~~(A)~~ "Supplier" means a manufacturer or importer of beer and light wine brands as registered with the director.

~~(B) "Supplier" does not include a small brewery under the Arkansas Native Brewery Act, § 3-5-1401 et seq.;~~



SECTION 3. Arkansas Code § 3-5-1102, concerning the definitions for beer wholesalers and suppliers is amended to add an additional subdivision to read as follows:

(15) "Successor" means a person who replaces a supplier with regard to the right to manufacture, sell, or import beer;

SECTION 4. Arkansas Code § 3-5-1107, concerning prohibited acts by a supplier, is amended to add an additional subsection to read as follows:

(17) A successor becomes obligated under this section and under the terms and conditions of the agreement in effect on the date of succession regardless of the character or form of the succession.

SECTION 5. Arkansas Code § 3-5-1204 is amended to read as follows:

3-5-1204. Licenses – Scope – Restrictions.

(a) The Director of the Alcoholic Beverage Control Division may issue a microbrewery-restaurant license which shall authorize the licensee to do the following:

(1)(A) To:

(i) ~~operate~~ Operate a microbrewery which shall manufacture one (1) or more varieties of beer or malt beverage in an aggregate quantity not to exceed ~~five thousand (5,000)~~ twenty thousand (20,000) barrels per year; and

(ii) ~~to store any such~~ Store the manufactured beer or malt beverage and any other beer or malt beverage which the microbrewery-restaurant licensee may purchase from wholesalers and small brewers licensed by this state on the microbrewery-restaurant licensed premises.

(B) Two (2) or more microbrewery restaurants sharing common ownership or a brewery of any size sharing common ownership with a microbrewery restaurant shall be considered one (1) entity for calculating barrel production;

(2) To operate a restaurant which shall be the sales outlet for beer or malt beverage manufactured by the microbrewery and which shall sell the beer or malt beverage and any other beer, or malt beverage, or wine which the microbrewery-restaurant licensee may purchase from wholesalers licensed by this state for consumption on the licensed premises or purchased directly

from licensed small brewers allowed to distribute directly to the microbrewery-restaurant;

(3)(A) To sell on the premises beer or malt beverages manufactured by the microbrewery in brewery-sealed packages at retail directly to the *consumer for off-premise consumption on any day of the week;* and

(B) To serve on the premises complimentary samples of beer and malt beverages produced by the microbrewery-restaurant;

(4)(A) To provide products it manufactures to charitable or nonprofit organizations or sell for resale products it manufactures to charitable or nonprofit organizations holding valid special event permits as provided for by the Alcoholic Beverage Control Board, except that the microbrewery-restaurant licensee may not sell to nonprofit organizations holding private club licenses.

(B) The sale of those products shall be limited to the duration of the particular special event; and

(5) To sell beer or malt beverages manufactured by the microbrewery-restaurant to a nonprofit corporation leasing space in the microbrewery-restaurant or in an adjoining building; and

(6)(A) To sell at retail by the drink or by the package beer produced on the premises of the microbrewery restaurant if all sales occur in a wet territory and at fairs and food and beer festivals, with the permission and the consent of the management of events.

(B) A sales and use tax permit is required for sales under this subdivision.

~~(b) The director may additionally issue a microbrewery-restaurant distribution permit to a microbrewery-restaurant licensee. This permit will allow the microbrewery-restaurant licensee to:~~

~~(1)(7) Sell beer or malt beverage of its own manufacture to a wholesale dealer licensed by this state for the purpose of resale to other retail license holders as set forth by § 3-4-605 and § 3-5-101, dealing with wholesale distribution of beer and malt beverage; and~~

~~(2) Maintain a separate brewing facility as needed to meet demand, except that all facilities utilized by the microbrewery-restaurant licensee shall not in the aggregate produce over five thousand (5,000) barrels of beer and malt beverage per year, and all products produced by any~~

~~separate facility must be sold to a licensed wholesaler. At no time does this allow any product produced by any separate facility to be transported to the restaurant location for retail sale for consumption on or off the licensed premises.~~

(8)(A) Conduct beer and malt beverage 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 and malt beverage 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) Only beer and malt products produced by the microbrewery restaurant shall be used for an event approved under this subdivision (a)(8).

~~(e)(b)~~ The director shall not issue a microbrewery-restaurant license if the microbrewery-restaurant premises is in a dry area.

SECTION 6. Arkansas Code § 3-5-1205 is amended to read as follows:

3-5-1205. Fees and taxes.

A microbrewery-restaurant licensee shall:

(1) Pay any applicable city or county license or permit fees and barreage or taxes and shall pay a state licensing fee to the Alcoholic Beverage Control Division of seven hundred fifty dollars (\$750) per fiscal year to manufacture and sell its beer and malt beverages for consumption both on and off the premises and to sell any other beer and malt beverages purchased from a licensed wholesaler for consumption on the premises;

(2) Measure beer and malt beverages manufactured by the microbrewery, otherwise comply with applicable regulations respecting excise and enforcement tax determination of ~~such~~ the beer and malt beverages, and pay any applicable bond or deposit and the amount of the state excise tax and *enforcement tax to this state, but free from the fees and taxes provided in § 3-5-205, and as required by §§ 3-7-104 and 3-7-111; and*

~~(3) Pay a state permit fee to the Alcoholic Beverage Control Board of two hundred dollars (\$200) per year for the rights and privileges~~

~~provided by the microbrewery restaurant distribution permit granted under § 3-5-1204(b) Pay a tax at the rate of seven dollars fifty cents (\$7.50) per barrel, and proportionately for larger and smaller gallonages per barrel, on all beer and malt beverages in quantities of up to twenty thousand (20,000) barrels per year produced and sold or offered for sale in the state.~~

SECTION 7. Arkansas Code § 3-5-1401 is amended to read as follows:

3-5-1401. Title.

This subchapter shall be known and may be cited as the “Arkansas ~~Native~~ Small Brewery Act”.

SECTION 8. Arkansas Code § 3-5-1403 is amended to read as follows:

3-5-1403. Definitions.

As used in this subchapter:

- (1) “Barrel” means thirty-one gallons (31 gals.);
- (2) “Beer” means any fermented liquor made from malt or any substitute having an alcoholic content of not more than five percent (5%) by weight;
- (3) “Brewery” means ~~the facilities of a native brewer that operate a small brewery, or contract brewing company, microbrewery, or restaurant;~~
- (4) “Contract brewing company” means any licensed brewery that hires another company to produce a portion of its beer or malt beverage;
- ~~(5) “Director” means the Director of the Alcoholic Beverage Control Division;~~
- ~~(6)~~(5) “Malt beverage” means any liquor brewed from the fermented juices of grain and having an alcoholic content of no less than five percent (5%) nor more than twenty-one percent (21%) by weight;
- ~~(7) “Microbrewery restaurant” means any restaurant that manufactures one (1) or more varieties of beer or malt beverage in an aggregate quantity of not more than five thousand (5,000) barrels per year and stores the beer or malt beverages on the premises or on any adjacent premises;~~
- ~~(8) “Native brewer” means any person who is licensed by the Alcoholic Beverage Control Division to manufacture and sell beer and malt beverages at a small brewery or microbrewery restaurant;~~

~~(9) “Native brewery” means a small brewery or microbrewery-restaurant;~~

~~(10)~~(6) “Person” means any natural person, partnership, association, or corporation; and

~~(11) “Producer brewery” means any licensed brewery, domestic or foreign, that manufactures or packages beer or malt beverages for a small brewery, contract brewing company, microbrewery, or restaurant;~~

~~(12) “Restaurant” means any public or private facility 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 regularly served, and the place is provided with adequate and sanitary kitchen and dining equipment and has a seating capacity of at least fifty (50) people and employs a sufficient number of employees to prepare, cook, and serve food suitable for its guests or members; and~~

~~(B) Serves at least one (1) meal per day, and the place is open a minimum of five (5) days per week with the exception of holidays, vacations, and periods of redecorating; and~~

~~(13)~~(7)(A) “Small brewery” means any licensed facility located in Arkansas that manufactures fewer than ~~thirty thousand (30,000)~~ forty-five thousand (45,000) barrels of beer and malt beverages per year for sale or consumption.

(B) “Small brewery” does not include a microbrewery restaurant.

SECTION 9. Arkansas Code §§ 3-5-1405 - 3-5-1412 are amended to read as follows.

3-5-1405. Licenses – Scope – Restrictions.

(a) The Director of the Alcoholic Beverage Control Division may issue a license for a licensee+

~~(1) To~~ to operate a small brewery that:

~~(A)~~(1) Manufactures at its licensed facility+

~~(i) No~~ no less than thirty-five percent (35%) of its beer and malt beverages to be sold in the state and no more than ~~thirty thousand (30,000)~~ forty-five thousand (45,000) barrels per year; ~~or~~

~~(ii) Purchases from a producer brewery beer or malt beverages in an aggregate quantity not to exceed sixty thousand (60,000)~~

~~barrels per year;~~

~~(B)(2)~~ Sells to wholesale or to the consumer at the small brewery premises for consumption either on or off the premises brand name products of the licensed facility;

~~(C)(3)~~ Stores any beer and malt beverages legally purchased for resale on the premises;

~~(D)(4)~~ Serves on the premises ~~or at small brewery off premises retail sites~~ complimentary samples of beer produced by the small brewery ~~or another licensed small brewery if the small brewery or its off premises retail sites are located in a wet territory;~~

~~(E)(5)~~ Sells:

(A) At retail by the drink or by the package beer produced on the premises of the small brewery ~~or produced by another small brewery~~ if all sales occur in a wet territory; ~~and at:~~

~~(i)~~ ~~The small brewery off premises retail sites;~~ or

~~(ii)(a)(B)(i)~~ Fairs At fairs and food and beer festivals, with the permission and the consent of the management of the events.

~~(b)(ii)~~ A sales and use tax permit also is required for sales under ~~this subdivision (a)(1)(E)(ii)~~ subdivision (a)(5)(B)(i) of this section;

~~(F)(i)(6)(A)(i)(a)~~ Sells and transports beer produced on the premises of the small brewery ~~or of another small brewery~~ to wholesale ~~and retail license holders~~ and small brewery license holders.

(b)(1) Sells and transports beer and malt products produced on the premises of the small brewery to retail license holders and small brewery license holders if the total production of the permitted brewery does not exceed fifteen thousand (15,000) barrels per year.

(2) Each permitted outlet shall submit documentation of production each year to renew the permit with the Alcoholic Beverage Control Division.

(ii) A small brewery may distribute no more than fifteen thousand (15,000) barrels of per year.

~~(ii)(B)(i)~~ To sell and transport beer under subdivision ~~(a)(1)(F)(i)(a)(6)(A)~~ of this section, the small brewery license holder shall obtain a small brewery wholesale permit.

(ii) The small brewery license holder shall

pay a fee of two hundred fifty dollars (\$250) per year for the permit under subdivision (a)(6)(B)(i) of this section; and

~~(G)(7) Sells for consumption on the premises of the small brewery; beer produced by the small brewery or another small brewery and purchased by the drink or by the package at the licensed premises if the small brewery is located in a wet territory; or~~

(A) Beer produced by the small brewery or another small brewery; or

(B) Wine.

~~(2) To operate a microbrewery restaurant that:~~

~~(A) Manufactures beer and malt beverages in an aggregate quantity not to exceed five thousand (5,000) barrels per year;~~

~~(B)(i) Sells to wholesale or retail dealers or to the consumer for consumption either on or off the premises.~~

~~(ii) However, off-premise sales are limited to brand name products of the licensed facility;~~

~~(C) Stores any beer and malt beverages purchased for resale on the premises; and~~

~~(D) Sells wine on the premises.~~

(b) Notwithstanding the provisions of any other law to the contrary, beer and malt beverages may be sold for on-premises or off-premises consumption during all legal operating hours in which business is normally and legally conducted on the premises, if:

(1) The brewery provides tours through its facility; and

(2) Only sealed containers are removed from the premises.

(c)(1) A ~~native~~ small brewery may provide beer and malt beverages it manufactures to charitable or nonprofit organizations or sell for resale beer and malt beverages it manufactures to charitable or nonprofit organizations holding valid special event permits issued by the Alcoholic Beverage Control Board.

(2) The sale of those products is limited to the duration of the particular special event.

~~(d) Any person holding a valid microbrewery restaurant license is considered a native brewery licensee that maintains production limits according to the definition of microbrewery restaurant in § 3-5-1403.~~

3-5-1406. Additional license to sell ~~native~~ small brewery beer and malt beverages not required.

(a) Any wholesale or retail dealer that is licensed to sell beer and malt beverages may sell beer and malt beverages produced by ~~native~~ small brewers without any additional license fee.

(b) Any retail dealer not licensed to sell beer and malt beverages may sell beer and malt beverages produced by ~~native~~ small brewers and microbrewery restaurants licensed under § 3-5-1204 if the retailer pays a retail dealer's license fee of fifteen dollars (\$15.00) to the Alcoholic Beverage Control Division.

~~(c) Any person not licensed as a wholesale dealer of beer and malt beverages may sell on a wholesale basis beer and malt beverages produced by native brewers if the person pays a wholesale dealer's license fee of fifty dollars (\$50.00) to the division.~~

3-5-1407. Transportation.

(a) A ~~native~~ small brewery may transport its beer and malt beverages along any highway, road, street, or other thoroughfare of travel.

(b) ~~Any native~~ A small brewery may ship its products out of the state by common carrier or other appropriate parcel delivery service, and common carriers and other appropriate parcel delivery services may accept beer and malt beverages from Arkansas ~~native~~ small brewers for delivery outside the state.

(c) ~~Any native~~ A small brewery in this state may ship its products within the state by common carrier or other appropriate parcel delivery service, and common carriers and other appropriate parcel delivery services may accept beer and malt beverages from Arkansas ~~native~~ small breweries for delivery within the state if the beer and malt beverages are only shipped to persons holding a wholesale permit to purchase, store, sell, or dispense beer and malt beverages.

3-5-1408. Fees and taxes.

A ~~native~~ small brewer shall:

(1) Pay any applicable city or county license or permit fees and barrelogage or taxes and shall pay a state licensing fee to the Alcoholic Beverage Control Division of three hundred dollars (\$300) per fiscal year to:

(A) Manufacture and sell its beer and malt beverages for consumption, both on and off the premises; and

(B) Sell any other beer and malt beverages purchased from a licensed dealer for consumption on or off the premises;

(2) Measure beer and malt beverages manufactured by the small brewer or purchased from a ~~producer~~ contract brewery, or otherwise comply with applicable regulations respecting excise and enforcement tax determination of the beer and malt beverages, and pay any applicable bond or deposit and the amount of the state excise tax and enforcement tax to this state as required, but is free from 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 and malt beverages in quantities of up to ~~thirty thousand (30,000)~~ forty-five thousand (45,000) barrels per year and sold or offered for sale in the state.

3-5-1409. Beer and malt beverage education.

(a)(1) ~~Native brewers~~ A small brewer may be allowed to conduct beer and malt beverage tasting events for educational or promotional purposes at any location in a wet area of this state if approved by the Alcoholic Beverage Control Division and if written notice is given by the division to the ~~native~~ small brewer at least five (5) days before the event.

(2) Requests for approval to conduct beer and malt beverage tasting events must be received by the division at least two (2) weeks before the event.

(b) Beer and malt beverage tasting events may be held in any facility licensed by the division if written notice is given by the division under subsection (a) of this section.

~~(c) The criminal penalties for drinking in public as prescribed by § 5-71-212 are not applicable to any beer and malt beverage tasting event approved by the division under this section.~~

3-5-1410. Licenses – Application.

~~No native~~ A small brewers license shall not be issued unless the applicant files with the Director of the Alcoholic Beverage Control Division

a verified application in a form and content that the director requires, accompanied by payment of the applicable fee.

3-5-1411. Operation without license prohibited.

It is a Class C misdemeanor for any person not holding a valid ~~native~~ small brewers license to operate as a ~~native~~ small brewer.

3-5-1412. Dry areas prohibited.

It is unlawful for the Director of the Alcoholic Beverage Control Division to issue a ~~native~~ small brewers license in any city, county, township, or other area in this state if the sale or possession of beer and malt beverages is unlawful.

SECTION 10. Arkansas Code § 3-5-1416 is amended to read as follows:

3-5-1416. Small brewery ~~not~~ is a supplier.

(a) A small brewery selling and transporting beer and malt products produced on the premises of the small brewery is not a supplier under § 3-5-1102.

(b) A small brewery is not subject to § 3-5-1101 et seq., unless the small brewery exceeds annual production of beer and malt beverages of fifteen thousand (15,000) barrels.

SECTION 11. Arkansas Code § 3-7-116(b), concerning tax rebates for qualified liquor manufacturers", is amended to add an additional subsection to read as follows:

(b)(1)(A) A qualified manufacturer is entitled to a tax rebate equal to seven dollars and fifty cents (\$7.50) per barrel of beer or malt beverage sold or offered for sale in Arkansas each calendar year by the qualified manufacturer or sold through its appointed wholesalers, if the qualified manufacturer or its wholesaler is required to report and pay tax under § 3-7-104(6) or § 3-5-1205(3) or § 3-5-1408(3) or § 3-7-104 on the beer or malt beverage first sold or offered for sale in this state.

(B) The tax rebate claimed each year by the qualified manufacturer under this section shall not exceed the annual tax liability of the qualified manufacturer and its wholesalers under or § 3-5-1205(3) § 3-5-1408(3) or § 3-7- 104 during the year requested.

(2) *The first twelve-month period for which a qualified manufacturer may claim a rebate under this section begins January 1, 2007, for the year ending December 31, 2006.*

SECTION 12. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that this act is essential to the public interest and operation of the alcohol laws in the State of Arkansas; that this act eliminates conflicting language and allows consistent application of alcohol laws; that this act is immediately necessary due to the substantial growth and continued expansion of the brewing industry in Arkansas; that clear and consistent application of the law to the brewing industry is in the public's immediate interest as is controlling the distribution of alcoholic beverages within the state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/J. Hutchinson