

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

State of Arkansas *As Engrossed: H3/14/17 H3/23/17 H3/28/17*
91st General Assembly **A Bill**
Regular Session, 2017

HOUSE BILL 2153

By: Representatives Penzo, G. McGill

By: Senator J. Hutchinson

For An Act To Be Entitled

AN ACT TO AMEND TITLE 3 OF THE ARKANSAS CODE
REGARDING PERMITS FOR ALCOHOLIC BEVERAGE BUSINESSES;
AND FOR OTHER PURPOSES.

Subtitle

TO AMEND TITLE 3 OF THE ARKANSAS CODE
REGARDING PERMITS FOR ALCOHOLIC BEVERAGE
BUSINESSES.

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

SECTION 1. Arkansas Code § 3-4-201 is amended to read as follows:

3-4-201. Number of permits restricted.

(a) As used in this section, "emergency circumstances" means delays in return to business that are beyond the control, planning, or foresight of the permit holder, including without limitation a:

- (1) Delay due to a natural disaster;*
- (2) Pending court action;*
- (3) Building construction problem; and*
- (4) Contested insurance claim.*

~~(a)~~(b) The public policy of the state is to restrict the number of permits in this state to dispense vinous (except small farm wines), spirituous, or malt liquor.

~~(b)~~(1)(c)(1) The Alcoholic Beverage Control Board shall determine whether public convenience and advantage will be promoted by issuing a permit and by increasing or decreasing the number of permits ~~it~~ the board issues.



(2) The number of permits issued by the board shall be restricted.

~~(e)~~(d) The board has the discretion to determine the number of permits to be granted in each county of this state or within the corporate limits of any municipality of this state and to determine the location and the persons to whom the permits shall be issued, under the following conditions:

(1) The number of permits allowing the off-premises sale of vinous (except small farm wines), spirituous, or malt liquor in the State of Arkansas shall not exceed a ratio of one (1) permit for every seven thousand five hundred (7,500) persons residing in the state;

~~(1)(A)~~(2)(A) The number of permits allowing the off-premises sale of vinous (except small farm wines), spirituous, or malt liquor in a county or political subdivision of the county ~~which~~ that permits the sale shall not exceed a ratio of one (1) permit for every ~~five thousand (5,000)~~ seven thousand five hundred (7,500) population residing in that county or political subdivision of the county.

(B) Population of the state, county, or political subdivision of the county shall:

(i) Be determined according to the most recent federal decennial census; and

(ii) Count all residents of the state, county, or political subdivision of the county, including without limitation the residents of a dry political subdivision of a county; ~~and~~

~~(2)~~(3) A new permit that is ~~issued~~ authorized in a county or political subdivision of the county following the most recent federal decennial census shall be issued under the following restrictions:

(A) Additional permits may be issued on a ratio of one (1) permit for every additional ~~five thousand (5,000)~~ seven thousand five hundred (7,500) population within the county or political subdivision of the county;

(B)(i) A qualified applicant may apply for a permit.

(ii) Qualifications are to be set by the board and ~~its~~ the board's determination of the public convenience and advantage;

~~(3)(A)~~(4)(A) If it is determined that a county or political subdivision of the county is entitled to additional permits when warranted by the most recent federal decennial census, the board ~~will~~ shall announce before the last date for applications the number of new permits, if any,

~~which~~ that may be issued in the county or political subdivision of the county.

(B) In the event that the most recent federal decennial census population figures decline in a county or political subdivision of the county:

(i) Existing permits shall not be cancelled or revoked for the decline in population;

(ii) The quota ratio shall not be applied to the county or political subdivision of the county until the population in the county or political subdivision of the county reaches a number equaling one (1) permit to every ~~five thousand (5,000)~~ seven thousand five hundred (7,500) population; and

(iii) A new permit shall not be issued in the county or political subdivision of the county until the population warrants.

(C) A transfer of locations from one county to another county is not allowed.

(D) If a holder of a permit for the sale of vinous (except small farm wines), spirituous, or malt liquor surrenders the permit in a county or political subdivision of the county where the ratio no longer meets the ~~one-to-five-thousand-population~~ one-to-seven thousand-five-hundred-population requirement, new applications will not be accepted until that ratio is reestablished at a subsequent federal decennial census;

~~(4)(A)(i)~~ (5)(A)(i) If a permit holder does not conduct business under a permit issued for a period of more than thirty (30) days, the permit shall be surrendered to the Director of the Alcoholic Beverage Control Division and shall be placed on inactive status.

(ii) The permit may remain inactive for six (6) months or until the permit holder notifies the director that he or she is ready to resume business, whichever is longer.

(B) To secure the return of the permit, the permit holder shall file with the director a written statement showing:

(i) That all taxes and fees owing to the state have been paid;

(ii) The reason for the suspension of business activities; and

(iii) The date business activity will resume.

(C)(i) The permit holder may petition the board for an extension of inactive status for an additional six-month period.

(ii) The board may grant an initial extension upon a showing by the permit holder and a finding by the board that:

(a) Business circumstances exist to justify an extension;

(b) The delay to return to business was not due to mere deferral or inattention on the part of the permit holder; and

(c) The inactive status should be extended.

(iii)(a) The permit holder may appeal to the board for a second extension of inactive status for an additional six-month period, but only upon a showing by the permit holder and a finding by the board that emergency circumstances exist to justify a final extension.

~~(b) "Emergency circumstances" are those delays in return to business which are beyond the control, planning, or foresight of the permit holder, including without limitation, a:~~

~~(1) Delay due to a natural disaster;~~

~~(2) Pending court action;~~

~~(3) Building construction problem; and~~

~~(4) Contested insurance claim.~~

(D) A permit remaining on inactive status for a period of more than eighteen (18) months or which has not been granted an extension under this subdivision (d)(5) shall expire; and

~~(5)(A)(6)(A)~~ This section and §§ 3-4-202 and 3-4-208, except a permit on inactive status for more than eighteen (18) months after the provisions of subdivision ~~(e)(4)~~ (d)(5) of this section become effective or which has expired in accordance with subdivision ~~(e)(4)~~ (d)(5) of this section, do not divest any permit holder holding the permit on ~~July 1, 1991~~ September 1, 2017, regardless of the quota ratio, of his or her permit.

(B) In a county or political subdivision of the county which has a ratio lower than the permit quota ratio of ~~one to five thousand population~~ one-to-seven thousand-five-hundred-population, the permit holder shall be allowed to continue under subdivision ~~(e)(3)(B)~~ (d)(4)(B) of this section.

~~(d) This section shall apply only to applications for permits to dispense vinous (except small farm wines), spirituous, or malt liquor filed~~

~~with the board after July 1, 1991.~~

SECTION 2. Arkansas Code § 3-4-404 is amended to read as follows:

3-4-404. Class B violations.

The following acts on the part of the permittee are Class B violations:

- (1) Pledge, hypothecation, or use of a permit as collateral;
- (2) Defacing, destroying, or altering a permit;
- (3) Transporting controlled beverages in violation of regulations or law;
- (4) Manufacturing, selling, offering, dispensing, or giving away, possessing, or transporting controlled beverages upon which tax is not paid;

(5) Failure to maintain proper records by a manufacturer;

(6) Failure by a wholesaler to maintain proper records;

(7) Failure by a wholesaler to register new brands;

(8)(A) Giving samples without authorization.

(B) Assisting a licensee or permittee under this title is not a gift to the licensee or permittee or an affiliate of the licensee or permittee under this subdivision (8).

(C) A rewards program offered by a retail liquor permittee to a retail customer who frequently makes purchases is not a gift under this subdivision (8);

(9) Sales for anything other than cash or check;

(10) Delivery without an invoice by a wholesaler;

(11) Selling to the insane;

(12) Selling to bootleggers;

(13) Accepting food stamps in payment for controlled beverages;

(14) Unlawful manufacture or sale in a dry area; and

(15) Sale of controlled beverages by vending machine.

SECTION 3. Arkansas Code § 3-5-104(c), concerning wine tasting events, is repealed.

~~(c) No tasting event may be held pursuant to this section in any facility licensed by the division.~~

SECTION 4. Arkansas Code § 3-5-104(f)(2)(B), concerning samples at

wine tasting events, is amended to read as follows:

(B) The samples shall be limited to a total of:

(i) ~~Three (3) one half ounce (0.5 oz.)~~ Up to six ounces (6 oz.) wine servings per customer each day for on-premises consumption;

(ii) ~~Two (2) two ounce (2 oz.)~~ Up to eight ounces (8 oz.) beer servings per customer each day for on-premises consumption; ~~and or~~

(iii) ~~Two (2) one half ounce (0.5 oz.)~~ Up to three ounces (3 oz.) spirit servings per customer each day for on-premises consumption.

SECTION 5. Arkansas Code § 3-5-203, concerning penalties for violating the law regarding permits for beer and light wine, is amended to add an additional subsection to read as follows:

(c) It is a violation of this chapter for anyone holding a permit authorized under this chapter to sell at retail any wine below the cost to purchase the product from a wholesaler.

/s/Penzo