

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

State of Arkansas As Engrossed: H1/26/23 H2/2/23 H2/7/23 H2/13/23

94th General Assembly

# A Bill

Regular Session, 2023

HOUSE BILL 1162

By: Representatives Ray, G. Hodges

By: Senators J. Boyd, J. English

## For An Act To Be Entitled

AN ACT TO AMEND THE LAW REGARDING MICROBREWERY-  
RESTAURANTS; TO AUTHORIZE MICROBREWERY-RESTAURANTS TO  
MANUFACTURE AND SELL READY-TO-DRINK PRODUCT; AND FOR  
OTHER PURPOSES.

## Subtitle

TO AMEND THE LAW REGARDING MICROBREWERY-  
RESTAURANTS; AND TO AUTHORIZE  
MICROBREWERY-RESTAURANTS TO MANUFACTURE  
AND SELL READY-TO-DRINK PRODUCT.

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

SECTION 1. Arkansas Code § 3-5-1202(3), concerning the definition of "beer, malt beverage, and hard cider law or rule", is amended to read as follows:

(3) "Beer, malt beverage, ~~and hard cider,~~ or ready-to-drink product law or rule" means any law of this state, or any rule promulgated and adopted with respect thereto, that is:

(A) Applicable to a person applying for or holding a license to manufacture beer, malt beverage, ~~or hard cider,~~ or ready-to-drink product; or

(B) Applicable to a person applying for or holding a license to sell beer, malt beverage, ~~or hard cider,~~ or ready-to-drink product in a restaurant for consumption on or off the licensed premises;



SECTION 2. Arkansas Code § 3-5-1202(5), concerning the definition of "conflicting beer, malt beverage, and hard cider law or rule", is amended to read as follows:

(5) "Conflicting beer, malt beverage, ~~or~~ hard cider, or ready-to-drink product law or rule" means any beer, malt beverage, ~~or~~ hard cider, or ready-to-drink product law or rule that prohibits or conflicts with the otherwise legal licensing and operation of microbrewery-restaurants, as authorized in this subchapter, by requiring any brewer to sell only to a licensed wholesaler, or requiring any licensed retailer to sell only beer, malt beverage, ~~or~~ hard cider, or ready-to-drink product purchased from a licensed wholesaler, or prohibiting any brewer or retailer from having any ownership or employment interest in the business of the other or the premises of the other, or requiring that the excise and enforcement tax on beer, malt beverage, ~~or~~ hard cider, or ready-to-drink product manufactured by a brewer be paid by a licensed wholesaler, or any beer, malt beverage, ~~or~~ hard cider, or ready-to-drink product law or rule of similar direct or indirect effect;

SECTION 3. Arkansas Code § 3-5-1202, concerning definitions related to microbrewery-restaurants, is amended to add an additional subdivision to read as follows:

(12) "Ready-to-drink product" means a product containing spirituous liquor with a final finished product of no greater than fifteen percent (15%) alcohol by weight.

SECTION 4. Arkansas Code § 3-5-1203 is amended to read as follows:

3-5-1203. Effect on other laws.

Every provision of this subchapter shall be subject to all beer, malt beverage, ~~and~~ hard cider, or ready-to-drink product laws and rules, except that conflicting beer, malt beverage, ~~and~~ hard cider, or ready-to-drink product laws and rules shall be inapplicable to any provision of this subchapter to the extent that they conflict herewith.

SECTION 5. Arkansas Code § 3-5-1204(a), concerning the scope of a microbrewery-restaurant license, is amended to read as follows:

(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 a microbrewery which shall manufacture one (1) or more varieties of beer, malt beverage, ready-to-drink product, 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; and

(ii) Store the manufactured beer, malt beverage, ready-to-drink product, or hard cider and any other beer, malt beverage, ready-to-drink product, or hard cider which the microbrewery-restaurant licensee may purchase from wholesalers and small brewers licensed by this state on the microbrewery-restaurant licensed premises and on the premises of the one (1) separate brewing facility of a microbrewery-restaurant authorized under subdivision ~~(a)(9)~~(a)(10) of this section.

(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 purposes of:

(i) Calculating barrel production; and

(ii) Transportation of beer, malt beverage, ready-to-drink product, or hard cider produced by one (1) entity among no more than three (3) microbrewery-restaurant facilities of the one (1) entity;

(2)(A) To operate a restaurant which shall be the sales outlet for beer, malt beverage, ready-to-drink product, or hard cider manufactured by the microbrewery and which shall sell the beer, malt beverage, ready-to-drink product, or hard cider and any other beer, malt beverage, ready-to-drink product, hard cider, 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.

(B) On-premises consumption of a ready-to-drink product shall only be allowed in cities and counties, or portions of cities and counties, in which the manufacture or sale of intoxicating liquor is not prohibited as a result of a local option election held under Initiated Act No. 1 of 1942, §§ 3-8-201 – 3-8-203 and 3-8-205 – 3-8-209, and in which the sale of alcoholic beverages for on-premises consumption has been approved by a majority vote at a referendum election as provided in § 3-9-201 et seq.;

(3)(A) To sell on the premises beer, malt beverage, ready-to-drink product, or hard cider manufactured by the microbrewery or commonly owned facility in brewery-sealed packages at retail directly to the consumer for off-premises consumption on any day of the week.

(B) A ready-to-drink product authorized for sale for off-premises consumption under subdivision (a)(3)(A) of this section shall be sold only from the location where the ready-to-drink product is manufactured;  
and

~~(B)(4)~~ To serve on the premises complimentary samples of beer, malt beverages, ready-to-drink product, or hard cider produced by the microbrewery-restaurant;

~~(4)(A)(5)(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;

~~(5)(6)~~ To sell beer, malt beverages, ready-to-drink product, or hard cider manufactured by the microbrewery-restaurant to a nonprofit corporation leasing space in the microbrewery-restaurant or in an adjoining building;

~~(6)(A)(7)(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 ~~(a)(6)(a)(7)~~;

~~(7) Sell~~(8) To sell beer, malt beverage, ready-to-drink product, or hard cider 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, malt beverage, ready-to-drink product, and hard cider;

~~(8)(A) Conduct~~(9)(A) To conduct beer-, malt beverage-, ready-to-drink product-, 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-, malt beverage-, ready-to-drink product-, 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) Only beer, malt beverage, ready-to-drink product, and hard cider produced by the microbrewery-restaurant shall be used for an event approved under this subdivision ~~(a)(8)(a)(9)~~.

(C) This subdivision ~~(a)(8)(a)(9)~~ does not authorize the conducting of a beer-, malt beverage-, ready-to-drink product-, and hard cider-tasting event at the one (1) separate brewing facility of a microbrewery-restaurant authorized under subdivision ~~(a)(9)(a)(10)~~ of this section; and

~~(9)(A) Maintain~~ (10)(A) To maintain one (1) separate brewing facility for the production or storage of beer, malt liquor, ready-to-drink product, or hard cider as needed to meet demand, except that each facility used by the microbrewery-restaurant licensee shall not in the aggregate produce more than forty-five thousand (45,000) barrels of beer, malt beverage, ready-to-drink product, and hard cider per year; ~~and.~~

(B) Beer, malt beverage, and hard cider produced by a separate brewing facility of a microbrewery-restaurant licensee shall be:

(i) Sold to a licensed wholesaler; or

(ii) Transported:

(a) From the separate brewing facility to a microbrewery-restaurant commonly owned by the owner of the separate brewing facility for retail sale for consumption on or off the licensed premises; and

(b) To the separate brewing facility from a microbrewery-restaurant commonly owned by the owner of the separate brewing facility for storage, production, or packaging.

(C) Ready-to-drink products produced by a separate brewing facility of a microbrewery-restaurant licensee shall be sold only to a licensed wholesaler."

*SECTION 6. Arkansas Code § 3-5-1204, concerning microbrewery-restaurant licenses issued by the Alcoholic Beverage Control Division, is amended to add an additional subsection to read as follows:*

*(d) A microbrewery-restaurant license holder that manufactures a ready-to-drink product shall comply with all federal laws and regulations, including without limitation obtaining a license to distill, warehouse, or process spirituous liquor issued by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury.*

*SECTION 7. 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, malt beverages, ready-to-drink product, and hard cider for consumption both on and off the premises and to sell any other beer, malt beverages, ready-to-drink product, and hard cider purchased from a licensed wholesaler for consumption on the premises;*

*(2) Measure beer, malt beverages, ready-to-drink product, and hard cider manufactured by the microbrewery, otherwise comply with applicable rules respecting excise and enforcement tax determination of the beer, malt beverages, ready-to-drink product, and hard cider, 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 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.*

*/s/Ray*