

Section 5.45 *Hotel-Motel Guest Authorized to Apply for Membership of Private Club.* In any case where a private club is operating within facilities connected with or leased or rented from a hotel or motel, any person registered as a guest of such hotel or motel may be admitted as a member to such private club only after making the application prescribed by these Regulations for any other applicant for private club membership. If the manager of the hotel or motel where the separate private club is housed desires to offer free samples of alcoholic beverages to registered hotel guests, the hotel guests must either become a member in conformance with the provisions of this Regulation, or the hotel guests may be admitted to the private club in the physical company of the manager or his or her designee at the time the reception is held. The manager shall be responsible for all drink charges that are assigned to him/her in order that the revolving fund of the non-profit corporation may be replenished as is required by law. (Amended 8-19-09)

Section 5.17.2 Private Club Restaurant Operations. Those private clubs which are held out to this agency as food service establishments must maintain food service operations on the permitted premises that meet the requirements for restaurants as defined in Section 4.6 of these regulations. Further, kitchen facilities in those private clubs must remain open and serve food within two hours before the dispensing of alcoholic beverages ceases on the permitted premises. (Adopted 8-19-09)

Section 3.19(3) Hours of Sale. 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 holds a permit that allows the on premises sale of alcoholic beverages may sell alcoholic beverages and allow the possession and consumption thereof on a Sunday between the hours of, 10:00 a.m. and 12:00 midnight, 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 294 of 2009, legalizing the sale of alcoholic beverages on a Sunday by all permittees located within their jurisdiction, then such off premises retail sales shall be lawful between the hours of 10:00 a.m. and 12:00 midnight, or within a lesser period of time as authorized by city or county ordinance.

It is further provided that when Sunday falls on December 31st of any year, any on premises consumption permit holder may sell and allow the possession and consumption of alcoholic beverages for on premises consumption between the hours of 10:00 a.m. 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 on New Year's Eve;

B. Christmas Day;

C. ***Repealed 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 Alcoholic Beverage Control 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 Alcoholic Beverage Control Division; (Adopted 8-18-99)

- E. Post Exchange Liquor Store permits may sell alcoholic beverages seven days per week to those customers that may purchase from such facilities. The post exchange package store may operate on the same hours as those established for military service clubs pursuant to ACA § 3-4-706. (Adopted 8-17-05)
- F. Any large attendance facility permit issued under the authority of ACA § 3-9-202(8)(B) in which parimutuel wagering has been authorized and which has a current large attendance facility permit for on premises consumption may sell alcoholic beverages on any day of the week during hours in which the large attendance facility is open for business except on (1) Christmas Day and (2) Easter Sunday. However, the large attendance facility may sell alcoholic beverages on Easter Sunday between the hours of 12:00 midnight and 2:00 a.m., as authorized by Act 790 of 2009.
- G. A restaurant holding a permit under ACA § 3-9-202(8)(A) may sell alcoholic beverages for on premises consumption between the hours of 12:00 midnight Saturday and 2:00 a.m. on Sunday and on Sunday between the hours of 12:00 noon and 2:00 a.m. on the following Monday in addition to other times authorized by law for selling alcoholic beverages for on premises consumption if the restaurant is located in the same city where a large attendance facility permit has been issued to a facility in which parimutuel wagering has been authorized. Such expanded hours are authorized under Act 7 of 2009. (Amended 8-19-09)

Section 3.19(2) Samples Prohibited. The permittee or any agent, servant or employee of the permittee accepted from any person or sold or gave to any person any samples, either in unbroken packages, partial packages, or by the drink; this provision is applicable to private clubs, and all holders of retail permits. **Provided,** retail liquor stores may offer samples of intoxicating liquors of all kinds pursuant to permit as authorized by Act 455 of 2007. **Provided further,** that holders of large attendance facility permits in which pairmutuel wagering has been authorized by law may offer samples of alcoholic beverages by the drink to patrons who are in that area of the permitted facility where games of skill are housed. **Provided further,** that holders of hotel permits and holders of private club permits that own or lease space within a hotel building may offer samples of alcoholic beverages by the drink to registered guests of the hotel as part of a manager's reception. All such samples offered shall be subject to the gross receipts and use taxes as a withdrawal from stock and shall be paid by the permit holder in the manner prescribed by law. (Amended 8-19-09)

Section 3.19(1)C. Gambling on Premises. Permitted gambling or games of chance or kept any gambling device, machine or apparatus upon the permitted premises.

Provided, any establishment licensed under the authority of Act 132 of 1969, as amended, (e.g. hotel-motel mixed drink, restaurant mixed drink, private club & large attendance facility) shall be allowed to have certain gambling machines or devices on its property in conformance with Act 1170 of 2005. Gambling devices or machines may only be on the property of a premises described above if the gambling machines or devices are being used by a non-profit organization that is described in the Act. Any non-profit organization desiring to use gambling machines on a permitted premises must register the event with the Alcoholic Beverage Control Division at least sixty (60) days before the event. The games used at the event may not use money but may use some form of play money. No cash or other item of value may be won or awarded as a prize. This proviso shall only be available for one event during a calendar year by any specific non-profit qualified organization. No permitted premises shall be allowed to host more than ten (10) such events per calendar year under authority of this law. **Provided further**, that games of bingo and raffles are not considered gambling when conducted at those permitted outlets which have obtained an authorized organization license from the Department of Finance and Administration to conduct games of bingo and raffles, pursuant to Act 388 of 2007. A violation of any provision of Act 388 of 2007 subjects the permitted outlet to the full range of administrative sanctions that may be levied by the Alcoholic Beverage Control Division. **Provided further**, that any activity authorized by the Arkansas Lottery Commission which occurs in a permitted outlet shall not be a violation of this regulation. (Amended 8-19-09)

Section 2.5.2 "Arkansas Native Brewery means any small brewery or microbrewery-restaurant permitted under the provisions of Act 1805 of 2003, as amended. A small brewery permitted under this law shall have the authority to manufacture and sell beer and malt beverages not to exceed an aggregate quantity of 30,000 barrels per year. The small brewery may sell to wholesalers, to retail license holders and other small brewery license holders, or to the consumer at the brewery facility. In addition, under the provisions of Act 1459 of 2009 the operator of a small brewery may serve complimentary samples of beer produced by the small brewery or by another licensed small brewery and may sell at retail by the drink or by the package beer produced by the small brewery or produced by another small brewery if all sales occur in a wet territory. Authorized sales as described above may occur at the small brewery location property, any small brewery – off premise retail site or at fairs and food and beer festivals as described in Act 1459. If the small brewery determines that it wishes to sell its own products to another small brewery, or to retail license holder it shall obtain a small brewery wholesale permit. A microbrewery-restaurant operator who operates under the Arkansas native brewer permit may manufacture beer and malt beverages in an aggregate quantity not to exceed 5000 barrels per year. The microbrewery-restaurant may sell to wholesalers, to other retail dealers or to the consumer at the microbrewery-restaurant for consumption either on or off the premises. The microbrewery restaurant must obtain a separate retail permit that authorizes the sale of wine for on premises consumption at the property. Off premises sales are limited to those brand name products which are produced at the permitted facility. Native brewer permittees may sell their beer and malt beverage products for on or off premises consumption during all legal operating hours of the business in which the business is normally and legally conducted, on any day of the week, unless otherwise prohibited by law, if the native brewer provides tours and provides that only sealed containers are removed from the premises. (Amended 8-19-09)

Section 2.31 Time Within Which Checks to be Deposited; Post-Dated Checks Prohibited; Insufficient Funds Checks. All checks given in payment for controlled beverages by a retailer to a wholesaler shall be deposited for payment by the wholesaler not later than the second banking day after the receipt of such check by the wholesaler. The failure of the wholesaler to deposit any such check for payment by the end of said banking day after receipt thereof shall be deemed a voluntary extension of credit by said wholesaler to the retailer and in violation of these Regulations. No wholesaler shall accept from any retailer a post-dated check.

Any retail permittee or private club permittee who has paid for alcoholic beverages purchased from any wholesaler with an insufficient funds check may be deemed delinquent.

Each wholesaler may report all delinquencies to the Administrator of the Division of Alcoholic Beverage Control in writing, including by electronic mail or facsimile transmission, within two (2) business days after such delinquencies occur. Such reports shall set forth the name, business address, and permit number of the permittee in default, the date of sale and delivery of such alcoholic beverages on account of which report is made, the amount of such delinquency, and the name, business address and permit number of the reporting wholesaler.

After receiving such delinquency report the Administrator shall notify all wholesalers by publishing a delinquent list which specifies an effective date for the list, and after said effective date no sales or deliveries of alcoholic beverages shall be made to any retail permittee or private club permittee whose name appears upon said delinquent list until such time as a notice of removal from such list has been given by the Administrator. After receiving notice of the delinquent list on which their name appears, no retail permittee or private club permittee may purchase or accept delivery of any alcoholic beverages from any wholesaler until the Administrator has given notice of removal from such list. After the effective date of the delinquent list, any retail permittee or private club permittee whose name appears on such list must pay the delinquency by cash, US Postal money order, postal note, express money order, cashier's check, certified check or bank exchange. Within twenty-four (24) hours of receipt of full payment the wholesaler shall report to the Administrator that payment in full has been made of any account previously reported delinquent.

If a retail permittee or private club permittee contends that he or she has been placed on the delinquent list as the result of a dispute involving the quality or quantity of the alcoholic beverages, or any other factor involved in the sale of or purchase of same, the wholesaler, retail permittee or private club permittee may file a statement in writing setting forth in detail any reason why a delinquency should or should not be deemed to exist. The Administrator shall thereupon determine whether the retailer shall be removed from the delinquent list. (Amended 8-19-09)

Section 2.28(16) Unlawful Pricing by Brewers and Manufacturers. Pursuant to Act 783 of 2009 it is unlawful for a brewer or manufacturer of malt beverage products to engage in unlawful pricing practices as between the manufacturer or brewer and their respective Arkansas wholesalers.

Any violation of these regulations, or any violation of Act 783 of 2009, shall subject the Arkansas Native Brewery permit or non-resident beer seller's permit issued to such party or their designee (Suppliers) to the full range of penalties as provided by ACA 3-2-212 and may also subject said permits to the imposition of a fine as authorized by ACA 3-4-401, et seq. The following regulations are hereby adopted to supplement Act 783:

- (1) A supplier shall offer all Arkansas wholesalers to whom it offers product the same price, allowance, rebate, refund, commission, or discount.
- (2) Suppliers shall act in "good faith" as defined in 3-5-1102(a)(4) toward wholesalers with regard to all matters including, but not limited to, transport costs, fees, charges, product support, rebates, commissions, refunds, and product availability.
- (3) No supplier may take any "retaliatory action" as defined in 3-5-1102(a)(6) against a wholesaler.
- (4) If a wholesaler believes a supplier has not acted in good faith or has taken retaliatory action against it, a hearing before the Director may be requested.
- (5) Suppliers with wholesalers that have state-wide distribution rights as of the effective date of this regulation may provide those wholesalers quantity discounts. Any wholesaler that obtains state-wide product distribution rights as of the effective date of this regulation, due to the consolidation of one or more wholesalers or suppliers, shall not be entitled to quantity discounts from the supplier.
- (6) A supplier shall post the following information with the Director in its most current form: FOB-Source for all products offered in Arkansas, and all allowances, rebates, refunds, commissions or discounts it offers.
- (7) All price information shall be provided by the supplier to the Director via email. It shall be submitted 14 days prior to any increase and 2 days prior to any decrease.

- (8) All information provided to the ABC Director by the supplier is proprietary in nature and not subject to freedom of information requests pursuant to the Arkansas Freedom of Information Act. (Adopted 8-19-09)

Section 2.28(11) Manufacturers Not to Engage in Price Fixing. No liquor manufacturer or supplier shall take or fail to take any action that would cause any type of fixing of wholesale or retail prices in the state. This shall include engaging in the industry practice known as "reach-back pricing". Suggestion of wholesale or retail prices will not be considered to be a violation of the permit. **Further,** alcoholic beverage manufacturers or suppliers shall not require, solicit or request any alcoholic beverage wholesaler to contribute to any local or national advertising, marketing or brand development fund, either directly or indirectly. (Amended 8-10-09)

Section 1.79(40) Alcohol Vaporizers Prohibited. That the permittee or any employee, agent or servant of the permittee allowed the use or possession on the permitted premises of any alcohol vaporizing device, as such is defined by Act 466 of 2009. (Adopted 8-10-09)

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, a combined restaurant beer and wine 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; (Amended 8-19-09)

Section 1.38.1 Permit Renewal; Penalty for Failure to Renew on Time -Exception for Personnel Called to Active Duty in the Armed Forces of the United States Who Are Stationed Outside the State; Annual Report for Non-Profit Corporation Filed by Private Club at time of Renewal of Permit.

All permits issued by the Alcoholic Beverage Control Division are renewable on or before June 30th of each calendar year for the fiscal year beginning July 1st. Any person renewing a permit after June 30th shall be required to pay a late renewal penalty in the amount of one-half ($\frac{1}{2}$) of the required yearly renewal fee for the permit for each sixty (60) days, or any portion thereof, after June 30th wherein the renewal is tendered, in addition to the amount of the yearly fee. Alcoholic Beverage Control Division permits may be renewed late by paying the above stated penalty beginning July 1st and ending October 28th of each fiscal year. No permit shall be renewed by the Alcoholic Beverage Control Division for the current fiscal year after October 28th.

For purposes of assessing the penalty, the renewal date shall be considered to be the date of the postmark if mailed, or the date of receipt, if hand delivered.

Holders of private club permits must, at the time of renewal of the permit, provide this agency with a file marked copy of the Annual Report for Non-Profit Corporation required by Act 569 of 2007.

In accordance with Act 966 of 2003, any individual owner/operator permittee of this agency who is a member of the National Guard of Arkansas or any reserve component of the United States of America, who is ordered to active duty to a duty station located outside of Arkansas shall be allowed an extension for renewing an alcoholic beverage permit issued by the Alcoholic Beverage Control Division. As provided by law the extension shall be allowed without penalty or assessment of a late fee if notification is given to the Alcoholic Beverage Control Division on or before June 30th of any calendar year that said individual owner/operator has been called to active duty as prescribed in Act 996 of 2003.

The extension shall not be granted where the person called to active duty is merely a manager for a corporation which is the permittee of this agency as other officers of the corporation may renew the permit in the absence of the person called to active duty. Likewise, the extension shall not be granted to any partnership or LLC where any partner or other member of the LLC can renew on behalf of the business entity. In accordance with Act 996 of 2003, the individual permittee of this agency that has been called to active duty outside the state shall have a grace period of six (6) months to complete the renewal process for his permit after release from active duty.

(Amended 8-19-09)

~~**Section 1.20(17)** Persons who have been granted an on premises retail beverage permit but who have been in operation for less than ninety (90) days and are without prior business experience may apply for a temporary permit that allows the sale of qualified alcoholic beverages on a Sunday. The time period for the use of the temporary permit shall be ninety (90) days. Before a temporary permit may be issued, an application for the temporary permit must be on file with this agency for thirty (30) days, as set forth in Section 1.60 of these Regulations, plus the number of days that must pass before the next meeting of the Board.~~

~~The applicant for a temporary license shall post the premises and publish notice of making application as set forth in Sections 1.23 and 1.26 of these Regulations, as well as any other requirements that apply to permits issued by the Alcoholic Beverage Control Division. On the same date the temporary license is issued, the person involved shall apply for a regular Sunday alcoholic beverage permit, with all application materials required being furnished with the application with the exception of the accountant's review called for in Section 1.20(16) of these Regulations. An accountant's review, prepared to the same standards as set forth in Section 1.20(16) of these Regulations, shall be submitted not later than eighty (80) days after the temporary permit is issued. The accountant's review period in this instance shall cover the first sixty (60) days of operation of the applicant's business.~~

~~If the review shows that the applicant meets the food sales test set forth in Section 1.20(16) of these Regulations, then the regular Sunday alcoholic beverage permit may be issued, if all other outstanding conditions have been met. If the applicant does not meet the food sales requirement, no regular permit will be issued and the temporary permit will expire as provided by law. The accountant's review in this instance shall cover the period from commencement of business under the on premises retail beverage permit through the first sixty (60) days of operation of the applicant's business under the temporary Sunday alcoholic beverage permit; (Amended 7-19-95)~~

~~**Section 1.20(16)** Any person applying for a Sunday alcoholic beverage permit shall prove certain gross sales figures by submitting a financial schedule to which a licensed accountant has applied agreed upon procedures as outlined below in accordance with attestation standards established by the American Institute of Certified Public Accountants. As used in regulations that apply to Sunday alcoholic beverage permits, financial change shall mean a financial presentation that shows a statement of operations by product lines that shows gross sales for the following product lines: (a) receipts for sleeping accommodations (if applicable); (b) food and food items; (c) non-alcoholic beverage sales; (d) alcoholic beverage sales; (e) in the case of excursion boats, boat rental fees. Alcoholic beverage means all intoxicating liquor of any sort.~~

~~The accountant shall include an additional paragraph in the accountant's report which states that, based on the accompanying financial schedule, the applicant does or does not have gross sales of sixty percent (60%) or more from items contained in categories (a), (b), (c), and (e) when gross sales of all product lines as set forth above are considered. Only twenty percent (20%) of receipts for sleeping accommodations may be used in meeting this test. The financial statement shall reflect the items as called for above, as well as other items required by generally accepted accounting principles.~~

~~At a minimum, the agreed upon procedures shall include: verification of the mathematical accuracy of the financial schedule submitted as a part of the accountant's report; sales categories included on the financial schedule that have been traced to the related underlying accounting records and documentation; and, that the sales categories were found to be fairly presented.~~

~~The reporting period shall be for the previous twelve (12) full calendar months prior to the month of application or portion thereof that the applicant has held an on premises retail beverage permit. The reporting period shall not be less than three (3) full calendar months. Persons who have been a holder of an on premises retail beverage permit for less than ninety (90) days and who are without prior business experience shall not be required to comply with this Regulation, but shall meet the requirements of Section 1.20(17) of these Regulations in applying for a temporary permit. Applicants for this permit shall post the premises and publish notice of the application as set forth in Sections 1.23 and 1.26 of these Regulations, as well as any other requirements that apply to permits issued by the Alcoholic Beverage Control Division.~~

~~In cases where one business entity purchases another business entity which holds an on premises retail beverage permit, the purchaser may either "stand in the shoes" of the seller, and use such financial data as would be furnished by the seller, or may choose to operate as a new business entity and provide the buyer's financial data to determine whether or not the new business is qualified to apply for and hold a regular or temporary Sunday alcoholic beverage permit under these Regulations; (Amended 8-17-05)~~

Section 1.19(43) Small Restaurant Permit authorizes a restaurant to purchase and resell five hundred sixty (560) liters of spirituous liquors or less per fiscal year. Under Act 763 of 2009 if the small restaurant permit holder purchases more than 560 liters of spirituous liquors in a fiscal year he/she shall then be required to apply for a permit under the provisions of Section § 3-9-212. The Small Restaurant shall meet the requirements for a restaurant as set forth in ACA § 3-9-202(8)(A).

The Small Restaurant Permit does not authorize the purchase or resale of wine products or beer products. If the Small Restaurant permit holder desires to sell wine or beer he/she must purchase additional permits for those products.
(Adopted 8-19-09)

Section 1.19(42) Combined Restaurant Beer and Wine Permit Under Act 294 of 2009 a combination restaurant beer and wine permit may be applied for by those persons with establishments that are qualified as restaurants under the provisions of ABC Reg. 3.4. The permit authorizes the on premise consumption only of beer as defined at ACA § 3-5-202(3) and wine, as defined at ACA § 3-9-301(2).
(Adopted 8-19-09)

Section 1.19(41) Minimum Wholesale Liquor Permit authorizes the sale of spirituous liquors, wine as defined in the Arkansas Code, and malt liquors at wholesale. A minimum wholesale liquor permit holder shall not sell more than a combined total of twenty thousand (20,000) cases of spirituous liquors, wine, or malt liquors. A case is a container that holds nine (9) liters of beverage. A minimum wholesale liquor permit holder may not sell beer products as defined in the Arkansas Code unless he/she receives a separate wholesale beer permit. (Adopted 8-19-09)

Section 1.19 (40) Native Brewery Permit authorizes the permit holder to operate a small brewery or a microbrewery – restaurant in the manner provided for by Act 1805 of 2003, as amended. (Amended 8-19-09)

~~Section 1.19(16) Sunday Alcoholic Beverage Permit~~ authorizes the sale of the same Alcoholic beverages on a Sunday as is authorized under a permit already allowing the sale of alcoholic beverages six (6) days a week for on premises consumption. A person that holds a permit allowing the sale of mixed drinks six (6) days a week shall be allowed to apply for a Sunday alcoholic beverage permit that will allow the sale of all types of alcoholic beverages on a Sunday, if such Sunday sales has been approved by the voters of the city or county as authorized by law. If a person permitted to sell beer and/or wine only is located in an area that has authorized the sale of mixed drinks on a Sunday, then such person can apply for a Sunday alcoholic beverage permit to sell beer and/or wine only on a Sunday. If the person is located in an area that has voted to authorize the sale of beer and wine only on a Sunday under the authority of Act 715 of 1995, then that person may apply for a Sunday alcoholic beverage permit that will allow the sale of beer and wine only on a Sunday; (Amended 7-19-95)

Section 1.19 (13) Liquor Wholesale Permit manufacturers or licensed importers of spirituous, vinous beverages or malt liquor containing more than five percent (5%) alcohol by weight, and the sale of such beverages to persons holding off premises liquor permits, or hotel or motel, or restaurant permits. Effective July 1, 2010, under the provisions of Act 294 of 2009, the holder of a wholesale liquor permit is also authorized to sell beer products as defined in the Arkansas Code under this same permit.