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2 90th General Assembly
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4

As Engrossed: S3/11/15
A Bill

SENATE BILL 646

5 By: Senator J. Hutchinson
6 By: Representative Sabin
7

For An Act To Be Entitled

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

15 TO AMEND THE LAW REGARDING MICROBREWERY
16 RESTAURANTS AND *SMALL* BREWERS; TO
17 AUTHORIZE SMALL BREWERY SALES AT OFF-
18 PREMISES RETAIL SITES; AND TO DECLARE AN
19 EMERGENCY.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

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

28 (g) A microbrewery restaurant is exempt from this section.
29

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

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

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



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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

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

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

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

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

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

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

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

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

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

29 ~~(1)(7) Sell beer or malt beverage of its own manufacture to a~~
30 ~~wholesale dealer licensed by this state for the purpose of resale to other~~
31 ~~retail license holders as set forth by § 3-4-605 and § 3-5-101, dealing with~~
32 ~~wholesale distribution of beer and malt beverage; and~~

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

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

5 (8)(A) Conduct beer and malt beverage tasting events for
6 educational or promotional purposes at any location in wet areas of this
7 state if:

8 (i) A request for approval to conduct a beer and
9 malt beverage tasting event is received by the Alcoholic Beverage Control
10 Division at least two (2) weeks before the event;

11 (ii) The request is approved by the division; and

12 (iii) Written notice is given by the division to the
13 permit holder at least five (5) days before the event.

14 (B) Only beer and malt products produced by the
15 microbrewery restaurant shall be used for an event approved under this
16 subdivision (a)(8).

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

19
20 *SECTION 6.* Arkansas Code § 3-5-1205 is amended to read as follows:

21 3-5-1205. Fees and taxes.

22 A microbrewery-restaurant licensee shall:

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

29 (2) Measure beer and malt beverages manufactured by the
30 microbrewery, otherwise comply with applicable regulations respecting excise
31 and enforcement tax determination of ~~such~~ the beer and malt beverages, and
32 pay any applicable bond or deposit and the amount of the state excise tax and
33 *enforcement tax to this state, but free from the fees and taxes provided in §*
34 *3-5-205, and as required by §§ 3-7-104 and 3-7-111; and*

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

1 ~~provided by the microbrewery restaurant distribution permit granted under §~~
 2 ~~3-5-1204(b) Pay a tax at the rate of seven dollars fifty cents (\$7.50) per~~
 3 ~~barrel, and proportionately for larger and smaller gallonages per barrel, on~~
 4 ~~all beer and malt beverages in quantities of up to *twenty thousand (20,000)*~~
 5 ~~barrels per year produced and sold or offered for sale in the state.~~

6
 7 *SECTION 7.* Arkansas Code § 3-5-1401 is amended to read as follows:
 8 3-5-1401. Title.

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

11
 12 *SECTION 8.* Arkansas Code § 3-5-1403 is amended to read as follows:
 13 3-5-1403. Definitions.

14 As used in this subchapter:

15 (1) “Barrel” means thirty-one gallons (31 gals.);

16 (2) “Beer” means any fermented liquor made from malt or any
 17 substitute having an alcoholic content of not more than five percent (5%) by
 18 weight;

19 (3) “Brewery” means ~~the facilities of a native brewer that~~
 20 ~~operate~~ a small brewery, or contract brewing company, ~~microbrewery, or~~
 21 ~~restaurant;~~

22 (4) “Contract brewing company” means any licensed brewery that
 23 hires another company to produce a portion of its beer or malt beverage;

24 ~~(5) “Director” means the Director of the Alcoholic Beverage~~
 25 ~~Control Division;~~

26 ~~(6)~~(5) “Malt beverage” means any liquor brewed from the
 27 fermented juices of grain and having an alcoholic content of no less than
 28 five percent (5%) nor more than twenty-one percent (21%) by weight;

29 ~~(7) “Microbrewery restaurant” means any restaurant that~~
 30 ~~manufactures one (1) or more varieties of beer or malt beverage in an~~
 31 ~~aggregate quantity of not more than five thousand (5,000) barrels per year~~
 32 ~~and stores the beer or malt beverages on the premises or on any adjacent~~
 33 ~~premises;~~

34 ~~(8) “Native brewer” means any person who is licensed by the~~
 35 ~~Alcoholic Beverage Control Division to manufacture and sell beer and malt~~
 36 ~~beverages at a small brewery or microbrewery restaurant;~~

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

3 ~~(10)~~(6) “Person” means any natural person, partnership,
4 association, or corporation; and

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

8 ~~(12) “Restaurant” means any public or private facility that:~~

9 ~~(A) Is kept, used, maintained, advertised, and held out to~~
10 ~~the public or to a private or restricted membership as a place where complete~~
11 ~~meals are regularly served, and the place is provided with adequate and~~
12 ~~sanitary kitchen and dining equipment and has a seating capacity of at least~~
13 ~~fifty (50) people and employs a sufficient number of employees to prepare,~~
14 ~~cook, and serve food suitable for its guests or members; and~~

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

18 ~~(13)~~(7)(A) “Small brewery” means any licensed facility located
19 in Arkansas that manufactures fewer than ~~thirty thousand (30,000)~~ forty-five
20 thousand (45,000) barrels of beer and malt beverages per year for sale or
21 consumption.

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

24
25 SECTION 9. Arkansas Code §§ 3-5-1405 - 3-5-1412 are amended to read as
26 follows.

27 3-5-1405. Licenses – Scope – Restrictions.

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

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

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

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

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

1 ~~barrels per year;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (ii) The small brewery license holder shall

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

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

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

9 (B) Wine.

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

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

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

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

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

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

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

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

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

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

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

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

36

1 3-5-1406. Additional license to sell ~~native~~ small brewery beer and
2 malt beverages not required.

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

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

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

15
16 3-5-1407. Transportation.

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

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

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

31
32 3-5-1408. Fees and taxes.

33 A ~~native~~ small brewer shall:

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

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

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

5 (2) Measure beer and malt beverages manufactured by the small
6 brewer or purchased from a ~~producer~~ contract brewery, or otherwise comply
7 with applicable regulations respecting excise and enforcement tax
8 determination of the beer and malt beverages, and pay any applicable bond or
9 deposit and the amount of the state excise tax and enforcement tax to this
10 state as required, but is free from the fees and taxes provided in § 3-5-205
11 and as required by §§ 3-7-104 and 3-7-111; and

12 (3) Pay a tax at the rate of seven dollars and fifty cents
13 (\$7.50) per barrel, and proportionately for larger and smaller gallonages per
14 barrel, on all beer and malt beverages in quantities of up to ~~thirty thousand~~
15 ~~(30,000)~~ forty-five thousand (45,000) barrels per year and sold or offered
16 for sale in the state.

17
18 3-5-1409. Beer and malt beverage education.

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

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

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

30 ~~(c) The criminal penalties for drinking in public as prescribed by §~~
31 ~~5-71-212 are not applicable to any beer and malt beverage tasting event~~
32 ~~approved by the division under this section.~~

33
34 3-5-1410. Licenses – Application.

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

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

3
4 3-5-1411. Operation without license prohibited.

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

7
8 3-5-1412. Dry areas prohibited.

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

13
14 *SECTION 10.* Arkansas Code § 3-5-1416 is amended to read as follows:

15 3-5-1416. Small brewery ~~not~~ is a supplier.

16 (a) A small brewery selling and transporting beer and malt products
17 produced on the premises of the small brewery is not a supplier under § 3-5-
18 1102.

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

22
23 *SECTION 11.* Arkansas Code § 3-7-116(b), concerning tax rebates for
24 qualified liquor manufacturers", is amended to add an additional subsection
25 to read as follows:

26 *(b)(1)(A) A qualified manufacturer is entitled to a tax rebate equal*
27 *to seven dollars and fifty cents (\$7.50) per barrel of beer or malt beverage*
28 *sold or offered for sale in Arkansas each calendar year by the qualified*
29 *manufacturer or sold through its appointed wholesalers, if the qualified*
30 *manufacturer or its wholesaler is required to report and pay tax under § 3-7-*
31 *104(6) or § 3-5-1205(3) or § 3-5-1408(3) or § 3-7-104 on the beer or malt*
32 *beverage first sold or offered for sale in this state.*

33 *(B) The tax rebate claimed each year by the qualified*
34 *manufacturer under this section shall not exceed the annual tax liability of*
35 *the qualified manufacturer and its wholesalers under or § 3-5-1205(3) § 3-5-*
36 *1408(3) or § 3-7- 104 during the year requested.*

