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**BLR**

AMENDMENT SUMMARY: The proposed amendment allows microbrewery-restaurants to make ready-to-drink products. This proposed Amendment is in response to Act 169 of the 2023 Regular Session of the Arkansas General Assembly.

**Section 1.20 Types of Permits for Which Application May Be Made.**

(27) **Microbrewery-Restaurant Distribution Permit** authorizes a microbrewery-restaurant licensee to sell beer or malt liquors, and hard cider, or ready-to-drink product of its own manufacture to a wholesale dealer for the purposes of resale to retail licensees in Arkansas under the three-tier system of distribution. The total aggregate brewing limitation for a Microbrewery-Restaurant shall be in the amount of forty-five thousand (45,000) barrels per calendar year. In addition, any holder of a microbrewery-restaurant distribution permit may transport and ship its beer and malt liquor by appropriate means for delivery outside the State of Arkansas to business entities licensed and qualified to accept such products in their respective states; “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. (Amended 10-29-19 1-23-24)

**Section 2.5.1 “Microbrewery-Restaurant”** means any establishment in which beer, malt, and hard cider are brewed and sold at retail in a restaurant setting under the same ownership in the same building or attached buildings. The operation of the microbrewery-restaurant shall be a limited exception to the three-tier system as defined in other parts of these Rules. A microbrewery-restaurant establishment shall be allowed to brew hard cider, and beer, ready-to-drink products, or other malt beverage products, as defined in ACA § 3-5-1202, and such products may be brewed in one or more varieties to be served in the restaurant operated at the same premises. The microbrewery-restaurant shall be limited to a production of 45,000 barrels of products per year, with each barrel having a volume of thirty-one (31) gallons. The beer, malt beverage, or hard cider, or ready-to-drink products brewed at the microbrewery operation may be sold at the restaurant maintained at the same premises for on premises consumption on any day of the week. The microbrewery-restaurant may sell on the premises beer, malt beverages, and hard cider manufactured by the microbrewery in brewery-sealed packages at retail directly to the consumer for off-premises consumption on any day of the week. The microbrewery-restaurant may sell beer, malt, 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 ACA § 3-4-605 and ACA § 3- 5-101, dealing with the wholesale distribution of beer, malt, or hard cider, or ready-to-drink products. The restaurant may purchase beer from other manufacturers of beer as set forth in that Act for sale and dispensing at the restaurant operation. (Amended 9-15-15 1-23-24)

**2.53 Microbrewery-Restaurant and Separate Brewing Facility Application and Operations.**

A. A microbrewery-restaurant shall manufacture beer, malt beverage, or hard cider, or ready-to-drink products containing not in excess of twenty-one percent (21%) alcohol by weight, and may sell the same or products produced at the permittee’s separate brewing facility, for consumption on or off the premises. The microbrewery portion of the microbrewery-restaurant permitted operation (hereinafter “permitted business”) shall be separated from the restaurant portion of the permitted business by a

solid wall. The wall may be made of glass or other materials, but shall prevent direct access by the public patronizing the restaurant. If the operator of the permitted business does desire to allow members of the public to take a tour of the brewery, such tour shall only be conducted under the direct supervision of brewery personnel. Microbrewery-Restaurant permittees may store the manufactured beer, malt beverage, or hard cider, or ready-to-drink product, and any other beer, malt beverage, or hard cider, or ready-to-drink product which the permittee may purchase from wholesalers and small brewers licensed by this state on the microbrewery-restaurant premises and on the premises of the one (1) separate brewing facility of the microbrewery-restaurant. Two (2) or more microbrewery-restaurants sharing ownership or a brewery of any size sharing common ownership with a microbrewery-restaurant shall be considered one (1) entity for the purposes of calculating barrel production and transportation of beer, malt beverage, or hard cider produced by one (1) entity among no more than three (3) microbrewery restaurant facilities of the one (1) entity. (Amended 9-20-17 1-23-24) A ready-to drink product authorized for off-premises consumption under this section shall be sold only from the location where the ready-to-drink product is manufactured.

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

C. A microbrewery-restaurant permittee shall notify the Alcoholic Beverage Control of its intent to operate a separate brewing facility by providing the following documentation: (1) A completed Separate Brewing Facility application form; (2) A floor plan of the proposed premises; (3) At least four (4) photographs of the proposed premises, depicting the front, back and sides of the building; (4) Copies of any permits required by the Alcohol and Tobacco Tax and Trade Bureau for production at the location, if applicable; and (5) Certification that the proposed facility is in compliance with any local zoning requirements for the location.

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

Upon receipt of the required documentation, the Alcoholic Beverage Control shall issue an endorsement to the microbrewery restaurant permittee. The endorsement shall be posted on the premises in compliance with the specifications set forth in Section 1.37. (Adopted 9-20-17)

E. 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.

**2.58 Disposition of Microbrewery Products.** A microbrewery-restaurant operation shall be allowed to dispose or sell the products that it brews by the following methods:

(1) A permittee may sell beer or malt beverages in draft form at the restaurant for on premises consumption only;

(2) The permittee may can or bottle beer or malt beverage products and may sell those products in brewery-sealed packages at retail to the customer for consumption off the premises;

(3) The permittee may distribute beer and malt beverage products to charities and non-profit corporations on the same basis as a manufacturer under the provisions of Section 2.28(6) of these Rules or the microbrewery-restaurant may sell for resale the products that it manufactures to charitable or non-profit 89 organizations holding valid "special-event" permits as provided for by the Alcoholic Beverage Control Division, except they may not sell to non-profit organizations holding private club licenses except as provided in Subparagraph number 4 of this Section. The sale of said products shall be limited to the duration of the particular "special event" permitted activity;

(4) The permittee may sell at retail by the drink or by the package products produced on the premises of the microbrewery-restaurant at fairs and food and beer festivals, with the permission and the consent of the management of events. (Amended 9-16-15)

(5) The permittee may sell beer, malt beverages, and hard cider, and ready-to-drink products of its own manufacture to a wholesaler dealer licensed by this state for the purpose of resale to other retail license holders as set forth by ACA 3-4-605 and ACA 3-5-101, dealing with wholesale distribution of beer, malt beverage, and hard cider. (Adopted 9-16-15)

**2.55.2 Tastings.** A microbrewery-restaurant may conduct beer-tasting, malt beverage-tasting, and hard cider-tasting events for educational or promotional purposes at any location in wet areas of this state if:

(1) A request for approval to conduct a beer-tasting, malt beverage-tasting, and hard cider-tasting event is received by the Alcoholic Beverage Control Division at least two (2) weeks before the event;

(2) The request is approved by the division; and

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

The microbrewery-restaurant shall use only beer, malt beverage, and hard cider produced by the microbrewery-restaurant for an event approved. This section does not authorize the conducting of a beer-tasting, malt beverage-tasting, and hard cider-tasting event at a separate brewing facility of a microbrewery-restaurant private club.

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

2 94th General Assembly

# A Bill

3 Regular Session, 2023

HOUSE BILL 1162

4

5 By: Representatives Ray, G. Hodges

6 By: Senators J. Boyd, J. English

7

8

## For An Act To Be Entitled

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

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## Subtitle

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

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

27

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

30

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

33

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

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

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

17  
18 SECTION 3. Arkansas Code § 3-5-1202, concerning definitions related to  
19 microbrewery-restaurants, is amended to add an additional subdivision to read  
20 as follows:

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

24  
25 SECTION 4. Arkansas Code § 3-5-1203 is amended to read as follows:

26 3-5-1203. Effect on other laws.

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

32  
33 SECTION 5. Arkansas Code § 3-5-1204(a), concerning the scope of a  
34 microbrewery-restaurant license, is amended to read as follows:

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

1 the following:

2 (1)(A) To:

3 (i) Operate a microbrewery which shall manufacture  
4 one (1) or more varieties of beer, malt beverage, ready-to-drink product, or  
5 hard cider in an aggregate quantity not to exceed forty-five thousand  
6 (45,000) barrels per year from all facilities under common ownership with the  
7 microbrewery; and

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

15 (B) Two (2) or more microbrewery-restaurants sharing  
16 common ownership or a brewery of any size sharing common ownership with a  
17 microbrewery-restaurant shall be considered one (1) entity for purposes of:

18 (i) Calculating barrel production; and

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

22 (2)(A) To operate a restaurant which shall be the sales outlet  
23 for beer, malt beverage, ready-to-drink product, or hard cider manufactured  
24 by the microbrewery and which shall sell the beer, malt beverage, ready-to-  
25 drink product, or hard cider and any other beer, malt beverage, ready-to-  
26 drink product, hard cider, or wine which the microbrewery-restaurant licensee  
27 may purchase from wholesalers licensed by this state for consumption on the  
28 licensed premises or purchased directly from licensed small brewers allowed  
29 to distribute directly to the microbrewery-restaurant.

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

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

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

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

12 ~~(4)(A)(5)(A)~~ To provide products it manufactures to charitable  
13 or nonprofit organizations or sell for resale products it manufactures to  
14 charitable or nonprofit organizations holding valid special-event permits as  
15 provided for by the Alcoholic Beverage Control Board, except that the  
16 microbrewery-restaurant licensee may not sell to nonprofit organizations  
17 holding private club licenses.

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

20 ~~(5)(6)~~ To sell beer, malt beverages, ready-to-drink product, or  
21 hard cider manufactured by the microbrewery-restaurant to a nonprofit  
22 corporation leasing space in the microbrewery-restaurant or in an adjoining  
23 building;

24 ~~(6)(A)(7)(A)~~ To sell at retail by the drink or by the package  
25 beer produced on the premises of the microbrewery-restaurant if all sales  
26 occur in a wet territory and at fairs and food and beer festivals, with the  
27 permission and the consent of the management of events.

28 (B) A sales and use tax permit is required for sales under  
29 this subdivision ~~(a)(6)(a)(7)~~;

30 ~~(7) Sell(8)~~ To sell beer, malt beverage, ready-to-drink  
31 product, or hard cider of its own manufacture to a wholesale dealer licensed  
32 by this state for the purpose of resale to other retail license holders as  
33 set forth by §§ 3-4-605 and 3-5-101, dealing with wholesale distribution of  
34 beer, malt beverage, ready-to-drink product, and hard cider;

35 ~~(8)(A) Conduct(9)(A)~~ To conduct beer-, malt beverage-, ready-  
36 to-drink product-, and hard cider-tasting events for educational or

1 promotional purposes at any location in wet areas of this state if:

2 (i) A request for approval to conduct a beer-, malt  
3 beverage-, ready-to-drink product-, and hard cider-tasting event is received  
4 by the Alcoholic Beverage Control Division at least two (2) weeks before the  
5 event;

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

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

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

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

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

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

25 (i) Sold to a licensed wholesaler; or

26 (ii) Transported:

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

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

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

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

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

9  
10 SECTION 7. Arkansas Code § 3-5-1205 is amended to read as follows:

11 3-5-1205. Fees and taxes.

12 A microbrewery-restaurant licensee shall:

13 (1) Pay any applicable city or county license or permit fees and  
14 barrelogage or taxes and shall pay a state licensing fee to the Alcoholic  
15 Beverage Control Division of seven hundred fifty dollars (\$750) per fiscal  
16 year to manufacture and sell its beer, malt beverages, ready-to-drink  
17 product, and hard cider for consumption both on and off the premises and to  
18 sell any other beer, malt beverages, ready-to-drink product, and hard cider  
19 purchased from a licensed wholesaler for consumption on the premises;

20 (2) Measure beer, malt beverages, ready-to-drink product, and  
21 hard cider manufactured by the microbrewery, otherwise comply with applicable  
22 rules respecting excise and enforcement tax determination of the beer, malt  
23 beverages, ready-to-drink product, and hard cider, and pay any applicable  
24 bond or deposit and the amount of the state excise tax and enforcement tax to  
25 this state, but free from the fees and taxes provided in § 3-5-205, and as  
26 required by §§ 3-7-104 and 3-7-111; and

27 (3) Pay a tax at the rate of seven dollars and fifty cents  
28 (\$7.50) per barrel, and proportionately for larger and smaller gallonages per  
29 barrel, on all beer, malt beverages, and hard cider in quantities of up to  
30 forty-five thousand (45,000) barrels per year produced and sold or offered  
31 for sale in the state.

32  
33 /s/Ray

34  
35 **APPROVED: 3/2/23**