

State of Arkansas

76th General Assembly

Regular Session, 1987

AS ENGROSSED 3/4/87

HOUSE BILL 1802

By: Representatives Mullenix and Wimberly

AS ENGROSSED 3/31/87

"AN ACT TO ESTABLISH A PERMIT FOR THE REGULATION OF SUNDAY SALES OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION IN RESTAURANTS AND HOTELS, AS DEFINED IN THE ACT; TO ESTABLISH A SUNDAY SALES PERMIT FEE; TO PROVIDE FOR THE ISSUANCE AND THE SUSPENSION, CANCELLATION, AND REVOCATION OF THE SUNDAY SALES PERMIT; AND FOR OTHER PURPOSES."

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

SECTION 1. The business of handling, distributing, and selling alcoholic beverages for on-premises consumption on Sunday is hereby declared to be a privilege under the laws of the State of Arkansas and the purpose of this Act is to require such permits and to impose such fees as are necessary to regulate and to limit the business of Sunday sales of alcoholic beverages for on-premises consumption to those restaurants serving alcoholic beverages with meals and to those hotels and convention centers competing for convention and tourism business.

SECTION 2. As used in this Act, unless the context indicates otherwise:

(a) "Alcoholic beverages" means all intoxicating liquors of any sort, other than beer and native wine, as described and regulated in Act 244 of 1943, as amended, and Act 120 of 1965, as amended, respectively.

(b) "Board" means the Alcoholic Beverage Control Board of this State, or any successor agency.

(c) "Director" means the Director of the Department of Alcoholic Beverage Control.

(d) "Hotel" means every building or other structure commonly referred to as a hotel, motel, motor hotel, motor lodge, or similar name where sleeping accommodations are offered and which is kept, used, maintained, advertised,

and held out to the public to be a place where food is actually served and consumed, for adequate pay, to travellers or guests, whether transient, permanent, or residential, and:

(1) which has fifty (50) or more rooms for sleeping accommodations; and

(2) which is kept, used, maintained, advertised, and held out to the public to be a place where food and food items are served; and

(3) which actually serves full and complete meals prepared in a fully-equipped and sanitary kitchen and prepared from uncooked foods for service to and for consumption by the guests and customers on the premises; and

(4) which has a dining room or rooms with a seating capacity of at least fifty (50) people where meals are served to guests and customers; and

(5) which has sleeping accommodations and the dining room or rooms in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are a part of the same hotel operation; and

(6) which has employed a sufficient number and kind of employees to prepare, cook and serve suitable foods or food items to its guests and customers; and

(7) which serves food on all days of operations; and

(8) which maintains separate sales figures for alcoholic beverages; and

(9) which has gross sales of sixty percent (60%) or more from items in the following categories, (i) food and food items, (ii) non-alcoholic beverages and (iii) including up to twenty percent (20%) of receipts for sleeping accommodations.

(e) "On-premises consumption" means the sale of alcoholic beverages by the drink or in broken or unsealed containers for consumption on the premises where sold.

(f) "Person" means any natural person, partnership, association, or corporation.

(g) "Private club" means a nonprofit organization, association, or corporation as defined as a "private club" in Act 132 of 1969, as amended.

(h) "Restaurant" means any public or private place, without sleeping accommodations:

(1) which is kept, used, maintained, advertised, and held out to the public or to a private or restricted membership as a place whose primary function and purpose is to take orders for and to serve food and food items; and

(2) which actually serves full and complete meals prepared in a fully-equipped and sanitary kitchen and prepared from uncooked foods for service to and for consumption by its guests or members on the premises; and

(3) which has a seating capacity of at least fifty (50) people; and

(4) which has employed a sufficient number and kind of employees to prepare, cook and serve suitable foods to its guests or members; and

(5) which, on Sundays, serves alcoholic beverages on-premises only, in conjunction with meals; and

(6) which serves food on all days of operations; and

(7) which maintains separate sales figures for alcoholic beverages; and

(8) which has gross sales of sixty percent (60%) or more from the sale of food, food items, and non-alcoholic beverages or, in the case of excursion boats, which has gross sales of sixty percent (60%) of their gross income from boat rental fees, sales of food and non-alcoholic beverages.

(i) "Excursion boat" means any passenger vessel or boat such as a river-boat, floating restaurant, or excursion boat which meets the requirements for a permit for on-premises consumption of alcoholic beverages under Act 132 of 1969 as a restaurant.

SECTION 3. (a) Notwithstanding any other laws of this State which permit the sale of alcoholic beverages for on-premises consumption on Sundays, no hotel or restaurant that is licensed to sell alcoholic beverages for on-premises consumption under Act 132 of 1969, as amended, shall be permitted to sell alcoholic beverages for on-premises consumption on Sundays until they obtain a permit for such sales that is approved and issued by the Director, in

accordance with rules and regulations promulgated by the Board. Provided, however, this Act is not intended to impose an additional requirement on private clubs, licensed under Act 132 of 1969, as amended, to obtain a permit for Sunday sales of alcoholic beverages for on-premises consumption.

(b) No hotel or motel shall obtain a permit to sell alcoholic beverages for on-premises consumption on Sundays unless:

(1) they have a valid and current permit, which is not suspended, cancelled, or revoked, to sell alcoholic beverages for on-premises consumption issued under Act 132 of 1969, as amended;

(2) they are located in a city or county where the Sunday sales of alcoholic beverages for on-premises consumption has been approved by the voters of the city or county as authorized under Arkansas law;

(3) they meet all the requirements of being a "hotel" or a "restaurant", as specifically defined in this Act; and

(4) they pay the required fee for a permit as required herein.

(c) Provided, however, any hotel or restaurant having been in operation for less than ninety (90) days and without prior business experience on which to determine the gross sales requirements for "hotels" and "restaurants", as defined in Section 2, may be issued a temporary Sunday sales permit to sell alcoholic beverages for on-premises consumption on Sundays for a period not to exceed ninety (90) days. The temporary ninety (90) day time period is to be used to allow the business establishment to make a determination of its gross sales. The fee for the temporary Sunday sales permit shall be twenty-five dollars (\$25.00).

SECTION 4. Any hotel or restaurant as defined herein, desiring to sell alcoholic beverages for on-premises consumption on Sundays, shall make application to the Director for a permit upon forms prescribed and furnished by the Director and in accordance with the rules and regulations of the Board. The Board shall have authority to require an applicant, under oath, to disclose the following information: (a) the name of the applicant; (b) location of the hotel or restaurant; (c) sufficient data to establish that applicant meets the requirements of Sections 2 and 3 hereof; (d) the names and addresses of all

owners thereof; (e) that the applicant is a citizen of the United States and a resident of this State, or if a corporation, duly qualified to do business in this State; (f) that neither the applicant nor any person to be employed in the serving of beverages authorized herein shall be a person who has been convicted of any violation of the laws against possession, sale, manufacture or transportation of intoxicating liquor, or of any crime involving moral turpitude; (g) that the manager and/or operator of the hotel or restaurant seeking such permit is of good moral character; and (h) such other relevant information as may be required. Every permit issued under this Act shall be for an indeterminate period, subject to compliance with the annual renewal requirements herein prescribed, and shall not be transferable or assignable, as to owner or premises, except upon the written approval of the Director.

SECTION 5. No permit shall be issued hereunder unless the permittee has consented in writing that the permitted premises and its books and records shall be open at all times to all law enforcement and tax officials and officials of the Board and the Commissioner of Revenues without requirement of warrant or other legal process.

SECTION 6. (a) Each application for a Sunday sales permit shall be accompanied by a permit fee in the following applicable amount:

Sunday sales for Hotel, having fewer than 100 rooms.....	\$100.00
Sunday sales for Hotel, having 100 or more rooms.....	\$200.00
Sunday sales for Restaurant, having a seating capacity of less than 100 persons.....	\$100.00
Sunday sales for Restaurant, having a seating capacity of 100 or more persons.....	\$200.00

(b) An annual renewal fee in the same amount as provided in subsection (a) above shall be paid to the Director on or before July 1 of each year.

(c) The fee for permits issued between January 1 and July 1 shall be one-half of the amount specified in subsection (a) above.

(d) The fees required in this Section are supplemental to the fees and taxes levied by Act 132 of 1969, as amended, and do not relieve any restaurant or hotel from paying permit or renewal fees or supplemental gross receipts taxes levied by Act 132 of 1969, as amended, for sales of alcoholic beverages for on-premises consumption made on Sunday.

SECTION 7. The Board is authorized to adopt and enforce reasonable rules and regulations governing the qualifications for Sunday sales permits hereunder, the operation of permitted premises on Sundays, and otherwise implementing and effectuating the provisions and purposes of this Act to insure the strict enforcement of the law. The rules and regulations promulgated hereunder shall be supplemental and in addition to the rules and regulations promulgated to regulate the sale of alcoholic beverages for on-premises consumption at hotels and restaurants under Act 132 of 1969, as amended.

SECTION 8. The Director may, upon his own complaint or that of any law enforcement agency having jurisdiction over the permitted premises, suspend, cancel, or revoke any permit granted under this Act for violation by the permittee of any provisions of this Act or any rule, regulation, or order of the Board. No permit shall be suspended, cancelled, or revoked except after hearing by the Director with reasonable notice to the permittee and an opportunity for him or her to appear and defend themselves as provided in Section 13 of Act 159 of 1951. Appeals to the Board from an order by the Director of a suspension, cancellation, or revocation of a permit may be made as provided in Section 15 of Act 159 of 1951. Appeals from a Board decision to the Circuit Court of Pulaski County may be made as provided in Section 17 of Act 159 of 1951.

SECTION 9. (a) Sunday sale permits may be suspended, cancelled, or revoked:

(1) if the permittee no longer meets the requirements of the definition of a "hotel" or a "restaurant" under this Act; or

(2) if the permittee's restaurant or hotel permit for on-premises consumption of alcoholic beverages issued under Act 132 of 1969, as amended, is suspended, cancelled, or revoked for causes thereunder; or

(3) if the permittee's restaurant or hotel is located in a city or county where Sunday sales are not authorized or are no longer authorized under Arkansas law; or

(4) if the permittee wilfully fails to keep any records or

make any reports required by this Act or by rules or regulations adopted thereunder; or

(5) if the permittee makes any materially false statement in any application for a permit.

(b) If any permittee shall fail to remit any fee levied in this Act for the permit or for the annual renewal, the permit shall be revoked; provided that such permit may be restored if the renewal fee is paid within thirty (30) days from the date on which due.

SECTION 10. Any permit for Sunday sales of alcoholic beverages for on-premises consumption shall include authority to sell beer for consumption and to sell native and imported wine by the drink as permittees, licensed under Act 132 of 1969, as amended, are authorized to do in Section 17 of Act 132 of 1969, as amended. Provided, however, that nothing in this Act shall authorize permittees of on-premises consumption of alcoholic beverages on Sundays to sell or to dispense alcoholic beverages by the package or by the bottle. And provided, further, that nothing in this Act shall authorize any permittee a license to sell beer for consumption on-premises under Act 244 of 1943, as amended, or any permittee licensed to sell wine for consumption on-premises under Act 120 of 1965, as amended, to sell or to dispense beer or wine for on-premises consumption on Sundays.

SECTION 11. It shall be unlawful and shall constitute a misdemeanor for any person not holding a valid Sunday sales permit issued hereunder to sell alcoholic beverages for on-premises consumption. Any person found guilty of this provision may be fined not more than One Thousand Dollars (\$1,000.00) and, in the discretion of the court, imprisoned for not more than six (6) months. Each violation shall constitute a separate offense. The Director shall have the authority to suspend, cancel, or revoke, either, the permit issued under this Act or the on-premises permit issued under Act 132 of 1969, as amended, to any hotel or restaurant, or both, if a permittee is convicted under this provision.

SECTION 12. All permit fees collected for the State pursuant to this Act shall be remitted monthly to the State Treasury as "general revenues" and be credited to the State Apportionment Fund, and there shall be allocated and

transferred to the various funds, fund accounts, and accounts participating in "general revenues" in the respective portions to each as provided by, and to be used for the respective purposes set forth in, the Revenue Stabilization Law of Arkansas.

SECTION 13. All laws or parts of laws in conflict with this law are hereby repealed.

/s/ Ted Mullenix et al

