



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2016-009

February 11, 2016

David A. Couch
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Dear Mr. Couch:

I am writing in response to your request for certification, pursuant to Ark. Code Ann. § 7-9-107 (Supp. 2015), of the popular name and ballot title for a proposed constitutional amendment.

At the outset, I wish to make clear to you that the decision to certify or reject a popular name and ballot title is in no way a reflection of my view of the merits of a particular proposal. I am not authorized to, and do not, consider the merits of the measure when making my determination to certify or reject a popular name and ballot title.

The Attorney General is required, pursuant to Ark. Code Ann. § 7-9-107, to certify the popular name and ballot title of all proposed initiative and referendum acts or amendments before the petitions are circulated for signature. The law provides that the Attorney General *may, if practicable*, substitute and certify a more suitable and correct popular name and ballot title. Or, if the proposed popular name and ballot title are sufficiently misleading, the Attorney General may reject the entire petition.

Section 7-9-107 neither requires nor authorizes this office to make legal determinations concerning the merits of the act or amendment, or concerning the likelihood that it will accomplish its stated objective. In addition, consistent with Arkansas Supreme Court precedent, unless the measure is “clearly contrary to

law,”¹ this office will not require that a measure’s proponents acknowledge in the ballot title any possible constitutional infirmities.² Consequently, this review has been limited primarily to a determination, pursuant to the guidelines that have been set forth by the Arkansas Supreme Court, discussed below, of whether the popular name and ballot title you have submitted accurately and impartially summarize the provisions of your proposed amendment.

The purpose of my review and certification is to ensure that the popular name and ballot title honestly, intelligibly, and fairly set forth the purpose of the proposed amendment or act.³

REQUEST

You have requested certification, pursuant to Ark. Code Ann. § 7-9-107, of the following popular name and ballot title for a proposed constitutional amendment:

Popular Name

THE ON PREMISE LOCAL OPTION ELECTION ALCOHOL ACT

Ballot Title

An act to allow a dry county or city of the first class within the dry county to conduct an election to permit the on premise sale and consumption of alcoholic beverages upon the petition of fifteen percent (15%) of the qualified electors residing within the boundries [sic] of the dry county or city of the first class within the dry county; providing that on premises consumption is allowed only at a hotel, restaurant, microbrewery restaurant or festival; defining hotel,

¹ See *Kurrus v. Priest*, 342 Ark. 434, 445, 29 S.W.3d 669, 675 (2000); *Donovan v. Priest*, 326 Ark. 353, 359, 931 S.W.2d 119, 121 (1996); *Plugge v. McCuen*, 310 Ark. 654, 841 S.W.2d 139 (1992).

² As part of my review, however, I may address constitutional concerns for consideration by the measure’s proponents.

³ See *Arkansas Women’s Political Caucus v. Riviere*, 283 Ark. 463, 466, 677 S.W.2d 846 (1984).

restaurant, microbrewery, festival and other terms; and providing that no sales for off premise consumption is allowed.

RESPONSE

The popular name is primarily a useful legislative device.⁴ It need not contain detailed information or include exceptions that might be required of a ballot title, but it must not be misleading or give partisan coloring to the merit of the proposal.⁵ The popular name is to be considered together with the ballot title in determining the ballot title’s sufficiency.⁶

The ballot title must include an impartial summary of the proposed amendment or act that will give the voter a fair understanding of the issues presented.⁷ According to the Court, if information omitted from the ballot title is an “essential fact which would give the voter serious ground for reflection, it must be disclosed.”⁸ At the same time, however, a ballot title must be brief and concise;⁹ otherwise voters could run afoul of Ark. Code Ann. § 7-5-309’s five-minute limit in voting booths when other voters are waiting in line.¹⁰ The ballot title is not required to be perfect, nor is it reasonable to expect the title to cover or anticipate every possible legal argument the proposed measure might evoke.¹¹ The title, however, must be “free of any misleading tendency whether by amplification, omission, or fallacy, and it must not be tinged with partisan coloring.”¹² The ballot title must be honest and

⁴ *Pafford v. Hall*, 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950).

⁵ E.g., *Chaney v. Bryant*, 259 Ark. 294, 297, 532 S.W.2d 741, 743 (1976); *Moore v. Hall*, 229 Ark. 411, 316 S.W.2d 207 (1958). For a better understanding of the term “partisan coloring,” see *infra* at note 12.

⁶ *May v. Daniels*, 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004).

⁷ *Becker v. Riviere*, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980) (internal citations omitted).

⁸ *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

⁹ See Ark. Code Ann. § 7-9-107(b).

¹⁰ *Bailey* at 284, 884 S.W.2d at 944.

¹¹ *Id.* at 293, 844 S.W.2d at 946-47.

¹² *Id.* at 284, 884 S.W.2d at 942. Language “tinged with partisan coloring” has been identified by the Arkansas Supreme Court as language that “creates a fatally misleading tendency” (*Crochet v. Priest*, 326 Ark. 338, 347, 931 S.W.2d 128, 133 (1996)) or that “gives the voter only the

impartial,¹³ and it must convey an intelligible idea of the scope and significance of a proposed change in the law.¹⁴

Furthermore, the Court has confirmed that a proposed amendment cannot be approved if “[t]he text of the proposed amendment itself contribute[s] to the confusion and disconnect between the language in the popular name and the ballot title and the language in the proposed measure.”¹⁵ The Court concluded that “internal inconsistencies would inevitably lead to confusion in drafting a popular name and ballot title and to confusion in the ballot title itself.”¹⁶ Where the effects of a proposed measure on current law are unclear or ambiguous, it is impossible for me to perform my statutory duty to the satisfaction of the Arkansas Supreme Court without (1) clarification or removal of the ambiguities in the proposed amendment itself, and (2) conformance of the popular name and ballot title to the newly worded amendment.

It is my opinion, based on the above precepts, that a number of additions or changes to your ballot title are necessary in order to more fully and correctly summarize your proposal. I cannot, however, at this time, fairly or completely summarize the effect of your proposed measure to the electorate in a popular name or ballot title without the resolution of the ambiguities in the text of your proposed act itself. And thus I cannot determine precisely what changes to the ballot title are necessary to fully and correctly summarize your proposal. It is therefore not appropriate, in my opinion, for me to try to substitute and certify a more suitable and correct popular name and ballot title pursuant to Ark. Code Ann. § 7-9-107(b). Instead, you may, if you wish, redesign the proposed measure and ballot title, and then resubmit for certification. In order to aid your redesign, I highlight below the more concerning ambiguities in the *text* of your proposed act.

impression that the proponents of the proposed amendment wish to convey of the activity represented by the words.” (*Christian Civic Action Committee v. McCuen*, 318 Ark. 241, 249, 884 S.W.2d 605, 610 (1994)).

¹³ *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

¹⁴ *Christian Civic Action Committee*, 318 Ark. at 245, 884 S.W.2d at 607 (internal quotations omitted).

¹⁵ *Roberts v. Priest*, 341 Ark. 813, 825, 20 S.W.3d 376, 382 (2000).

¹⁶ *Id.*

1. The text of your initiated act does not contain a required enacting clause. Amendment 7 to the Arkansas Constitution (now codified at Ark. Const. art. 5, § 1), provides: “The style of all bills initiated and submitted under the provisions of this section shall be ‘Be It Enacted by the People of the State of Arkansas (municipality, or county, as the case may be).’” As stated by the Arkansas Supreme Court: “Simply put ... all bills initiated must be submitted in the following language set forth in Amendment 7: “‘Be it enacted by the people of the State of Arkansas’ (municipality, or county as the case may be). Thus our constitution speaks, and thus our law requires.”¹⁷

The Arkansas Constitution thus clearly requires the inclusion of an enacting clause in your proposed initiated act. The absence of an enacting clause from your measure creates an ambiguity as to the measure’s effectiveness.

2. The proposed act would allow the sale of alcoholic beverages for on-premises consumption at certain locations in a dry county or city of the first class within a dry county after an election approving such sales. Specifically, sales would be limited to “on-premises consumption at a *hotel, restaurant, microbrewery restaurant or festival.*” (Emphasis added). The definition of “festival” under the proposed measure generates several ambiguities.
 - “Festival” is defined in part under the measure’s definitional section as “an event held in a fixed location on city property or city right-of-way, ... and any activity in a non-fixed location associated with the event...” It is unclear whether the “event” and the associated “activity” are limited exclusively to the city property or city right-of-way.
 - After defining “festival,” the section uses the undefined term “Festival Events.” This introduces ambiguity, given that the only defined term is the term “festival.”

¹⁷ *Mertz v. States*, 318 Ark. 390, 394-95, 885 S.W.2d 853, 855-56 (1994). See also *United States Terms Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994) (recognizing that an enacting clause is required for “bills” initiated by the people, but not for constitutional amendments so initiated).

- The section addressing “festival” lists examples of events and activities, but it is unclear precisely how the actual, undefined “Festival Events”—including their location and length—are to be determined. A subdivision of the proposal entitled “Election Results – Effects” states that “it shall be lawful for the Director of the Alcoholic Beverage Control Division to issue the *relevant licenses or permits*” after an election resulting in a vote for the on-premises sale and consumption of alcoholic beverages. (Emphasis added). But there is no separate language or provision clearly identifying the potentially “relevant” licenses or permits, the procedure governing their issuance, or the terms thereof.
- This ambiguity extends to the permitting or licensing of the other locations where sales for on-premises consumption would be allowed under your proposed act if adopted, i.e., hotels, restaurants, and microbrewery-restaurants.

I recognize in this regard that another subdivision of your proposed measure—entitled “Construction”—declares that the act “shall be cumulative to the liquor laws now in force in this state and those are readopted herein.” The word “cumulative” suggests an intention to harmonize the proposed act with existing liquor laws.¹⁸ This—together with the declaration that “the [current] liquor laws ... are *readopted*” (emphasis added)—might further suggest an intention for the permitting and licensing processes to be governed by some current law(s). But the effect of this declaration is far from clear, in my opinion. The precise effect of “readopting” the “liquor laws now in force” is unclear; and in my opinion, the declaration will offer no clear guidance concerning the applicability of other laws or regulations to the provisions of this act, should your measure become law.¹⁹

¹⁸ See *Larey v. Wolfe*, 242 Ark. 715, 718, 416 S.W.2d 266, 268 (1967) (noting the statement in a Texas case that “an act reciting that it would be cumulative indicates a harmonious coexistence and co-operation,” and quoting the following statement in a federal case: “(W)here one thing is cumulative on another, whether it be remedy, penalty, or power, we are speaking commonly of two things which are at least consistent, and might, without incongruity, be applied at the same time.”).

¹⁹ Compare Ark. Code Ann. § 3-5-1203 (Supp. 2015) (providing that “[e]very provision of this subchapter [regarding microbrewery-restaurants] shall be subject to all beer, malt beverage, and hard cider laws and regulations, except that conflicting beer, malt beverage, and hard cider laws and regulations shall be inapplicable to any provision of this subchapter to the extent that they conflict herewith.”); Ark. Code Ann. § 3-9-205 (Repl. 2008) (providing with regard to sales for on-premises consumption that “[t]he Alcoholic

The uncertainty on this score with respect to “festival” permits is compounded by the measure’s inclusion of definitions for a “Temporary Spirits Permit,” “Temporary Beer Permit,” and “Temporary Wine Permit.” These terms are defined, but they are not used anywhere in the proposed act and are therefore without substance. Additionally, each term refers to “a defined premises” and a “defined limited period.” But as noted above, there is no clearly established procedure for defining the premises or the period for holding a festival. It is thus unclear how the “fixed location” and “non-fixed location” of a festival are to be determined.

3. In defining a “festival,” the proposed measure states:

Not included in this definition of Festival Events are events exclusively involving political or religious activity or events intended primarily for the communication or expression of ideas where no vendor activities are involved and which are protected under the First and Fourteenth Amendments to the Constitution of the United States.

I am unable to determine the meaning or effect of this provision. I am uncertain as a threshold matter whether the exclusion of these events as “festival events” means they do not qualify for a permit, or whether it means no permit is required in order for the sale and on-premises consumption of alcohol to occur at these events.

The subject of the modifying phrases under this provision is also unclear. Specifically, it is unclear whether the phrases “where no vendor activities are involved” and “which are protected under the [1st and 14th] Amendments” modify both 1) “events exclusively involving political or

Beverage Control Board is authorized to adopt and enforce reasonable rules and regulations governing the qualifications for permits hereunder, the operation of licensed premises, and otherwise implementing and effectuating the provisions and purposes of this subchapter and, in so doing, shall be guided, insofar as pertinent, by rules and regulations now or hereafter applicable to retail liquor outlets.”); Ark. Code Ann. § 3-5-1404 (part of the Arkansas Small Brewery Act, providing that “[e]very provision of this subchapter is subject to all beer, malt beverage, and hard cider laws and regulations not in conflict with the provisions of this subchapter.”).

- religious activity” and 2) “events intended primarily for the communication or expression of ideas.”
4. The definition of “hard cider” contains what appears to be a typographical error, wherein it refers to certain liquor containing “not more than **31 twenty-one** percent (21%) of alcohol by weight.”
 5. “Microbrewery-Restaurant” is defined as “any establishment in which *beer, malt, and hard cider* are brewed and sold at retail in a restaurant setting...” (Emphasis added). The use of the conjunctive “and” indicates that all three of these alcoholic beverages have to be brewed and sold in order for an entity to be a “microbrewery-restaurant” under the proposed act. I am uncertain whether that is the intent.
 6. In defining the term “microbrewery-restaurant,” the measure states that the operation “shall be a limited exception to the three-tier system *as defined in other parts of these Regulations.*” (Emphasis added). The reference to “these Regulations” is ambiguous and meaningless in context, given that the proposed act itself contains no regulations and does not refer to any existing regulations.
 7. The measure states, under the definition of “microbrewery-restaurant,” that the restaurant “may purchase beer from other manufacturers of beer *as set forth in that Act....*” (Emphasis added). It is unclear to what “Act” this refers.
 8. Subsection (b)(1) of the subdivision entitled “Local option election – Dry County On-premises” addresses the petition procedure for an election “for a *dry county on-premises election.*” (Emphasis added). But the following subsection (b)(2) refers to “the boundaries of *the dry or city of the first class within the dry county.*” (Emphasis added). The inconsistency may be a typographical error, but it is confusing nonetheless.
 9. Subsections (A)(1) and (2) of the subdivision entitled “Election Results – Effects” begin with phrases that are not complete sentences.
 10. Subsections (A)(1), under “Election Results – Effects.” states that licenses and permits may be issued “immediately after the certification of the results of an election ... under this section, as required by § 3-8-206.” Pursuant to section 3-8-206(b) (Repl. 2008), the county election commission must deliver to the county clerk its “certification declaring the result of the

election ... within three (3) days after the date of the election.” This would suggest that licenses and permits may issue under the proposed act within three days of an election approving the sale of alcoholic beverages for on-premises consumption. But section 3-8-206 also provides for a recount, under subsection (c), after which the election commission shall “immediately ... declare the result of the election as determined by such recount.” And subsection (d) of section 3-8-206 requires the county court to “enter its order declaring the result of the election” within 20 days after the election. These other provisions of section 3-8-206 introduce some uncertainty regarding the controlling time period for the issuance of licenses and permits under your measure.

11. It is also somewhat unclear whether the current recount provision under § 3-8-206(c) even applies, given that the proposed measure appears to contemplate the issuance of licenses or permits “immediately after the certification of the [election] results.” The measure states, under subsection (A)(1)(c), that the election-results section of the proposal controls to the extent of a “conflict with “§ 3-8-201 et seq.” This might indicate that section 3-8-206’s recount provision is inapplicable. But I believe a question remains whether the recount provision in current law indeed conflicts with the proposed measure’s election results section. Consequently, there is no clear indication of how the proposal will change current law in this respect.
12. As noted above, the subdivision entitled “Construction” declares that the act “shall be cumulative to the liquor laws now in force in this state and those are readopted herein.” As previously stated, the effect of declaring that current liquor laws are “readopted” is unclear. In addition to my uncertainty as to what other laws will apply to this act if it is adopted, I believe this language may introduce some uncertainty as to the future vote requirement in the event of an amendment or repeal by the General Assembly. Pursuant to Ark. Const. art. 5, § 1 (under GENERAL PROVISIONS, “Amendment and Repeal”), “[n]o measure approved by a vote of the people shall be amended or repealed by the General Assembly ... except upon a [vote of] two-thirds of the members....” I do not know whether this measure, by readopting current liquor laws, would be interpreted to include those laws. If it were properly so interpreted, then the question may arise whether any future amendment or repeal of those liquor laws would be subject to this constitutional vote requirement. My research has disclosed no helpful authority on this potential issue.

CONCLUSION

The ambiguities noted above are not necessarily all the ambiguities contained in your proposal, but they are sufficiently serious to require me to reject your popular name and ballot title. I am unable to substitute language in a ballot title for your measure due to these ambiguities. Further, additional ambiguities may come to light on review of any revisions of your proposal.

My office, in the certification of ballot titles and popular names, does not address the merits, philosophy, or ideology of proposed measures. I have no constitutional role in the shaping or drafting of such measures. My statutory mandate is embodied only in Ark. Code Ann. § 7-9-107, and my duty is to the electorate.

Based on what has been submitted, my statutory duty is to reject your proposed ballot title for the foregoing reasons and instruct you to redesign the proposed measure and ballot title.²⁰ You may resubmit your proposed act along with a proposed popular name and ballot title at your convenience.

Sincerely,



LESLIE RUTLEDGE
Attorney General

²⁰ Ark. Code Ann. § 7-9-107(c).

Popular Name

The On Premise Local Option Election Alcohol Act

Ballot Title

AN ACT TO ALLOW A DRY COUNTY OR CITY OF THE FIRST CLASS WITHIN THE DRY COUNTY TO CONDUCT AN ELECTION TO PERMIT THE ON PREMISE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES UPON THE PETITION OF FIFTEEN PERCENT (15%) OF THE QUALIFIED ELECTORS RESIDING WITHIN THE BOUNDRIES OF THE DRY COUNTY OR CITY OF THE FIRST CLASS WITHIN THE DRY COUNTY; PROVIDING THAT ON PREMISES CONSUMPTION IS ALLOWED ONLY AT A HOTEL, RESTAURANT, MICROBREWERY RESTAURANT OR FESTIVAL; DEFINING HOTEL, RESTAURANT, MICROWBREWERY, FESTIVAL AND OTHER TERMS; AND PROVIDING THAT NO SALES FOR OFF PREMISE CONSUMPTION IS ALLOWED.

Title

This Act shall be known as "The On Premise Local Option Election Alcohol Act."

Definitions

- (1) "Beer" means a fermented liquor made from malt or a malt substitute and containing not more than five percent (5%) alcohol by weight.
- (2) "Dry" means a county or territorial subdivision that voted to prohibit the manufacture or sale of intoxicating liquor under Initiated Act No. 1 of 1942, as amended, §§ 3-8-201 - 3-8-203 and 3-8-205 -- 3-8-209, or §§ 3-8-302 [repealed], 3-8-303, 3-8-304 [repealed], 3-8-305, and 3-8-306.
- (3) "Festival" means an event held in a fixed location on city property or city right-of-way, which the general public may attend, and any activity in a non-fixed location associated with the event such as a parade, walk-a-thon, run-a-thon. Festival Events include arts and craft shows, carnivals, circuses, dances, entertainment activities, exhibitions, fairs, flea markets, rallies, shows, or other similar events. Not included in this definition of Festival Events are events exclusively involving political or religious activity or events intended primarily for the communication or expression of ideas where no vendor activities are involved and which are protected under the First and Fourteenth Amendments to the Constitution of the United States.
- (4) "Hard cider" means liquor brewed from the fermented juices of fruit and containing more than three percent (3%) and not more than 31 twenty-one percent (21%) of alcohol by weight.
- (5) "Hotel" means every building or other structure commonly referred to as a hotel, motel, motor hotel, motor lodge, or by similar name, which is kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers or guests, whether transient, permanent, or residential, in which fifty (50) or more rooms are used for the sleeping accommodations of such guests, and having one (1) or more public dining rooms with adequate and sanitary kitchen facilities, and a seating capacity for at least fifty (50) persons, where meals are regularly served to such guests, such sleeping accommodations and dining room being conducted 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 hotel operation.
- (6) "Malt beverage" means a liquor brewed from the fermented juices of grain and having an alcoholic content of not less than five percent (5%) and not more than twenty-one percent (21%) of alcohol by weight.
- (7) "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 Regulations. A microbrewery-restaurant establishment shall be allowed to brew hard cider and beer 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 20,000 barrels of products per year, with each barrel having a volume of thirty-one (31) gallons. The beer, malt beverage, or hard cider 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 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, and hard cider. The restaurant may purchase beer from other manufacturers of beer as set forth in that Act for sale and dispensing at the restaurant operation for on-premise consumption only.

(8) "Restaurant" means any public or private place:

(A) (i) That is primarily engaged in the business of serving a meal for consumption on the premises to a guest and has a suitable kitchen facility to serve the entire menu approved by the Alcoholic Beverage Control Division.

(ii) The menu shall contain a selection of food and shall not be limited to sandwiches or salads.

(iii) The kitchen shall:

(a) Have adequate refrigeration to preserve the food on the menu;

(b) Be kept in a sanitary condition; and

(c) Comply with the regulations of the Department of Health; and

(iv) Food from the menu shall be available from opening time until two (2) hours before closing time; or

(B) (i) That qualifies as a "large meeting or attendance facility", which is defined, without limitation, as a facility housing convention center activity, tourism activity, trade show and product display and related meeting activity, or any other similar large meeting or attendance activity and which either itself or through one (1) or more independent contractors complies with all of the following:

(a) Actually serves full and complete meals and food on the premises;

(b) Has one (1) or more places for food service on the premises with a seating capacity for not fewer than five hundred (500) people;

(c) Employs a sufficient number and kind of employees to serve meals and food on the premises capable of handling at least five hundred (500) people; and

(d) Serves alcoholic beverages on the premises at one (1) or more places only on days that meals and food are served at one (1) or more places on the premises.

(9) "Spirituous liquor" means a liquor distilled from the fermented juices of grain, fruits, or vegetables and containing more than twenty-one percent (21%) alcohol by weight or any other liquids containing more than twenty-one percent (21%) alcohol by weight.

(10) "Temporary Spirits Permit" authorizes the sale of spirituous beverages for consumption on a defined premises for defined limited period of time for the purposes of sale during a festival.

(11) "Temporary Beer Permit" authorizes the sale of beer containing less than five percent (5%) alcohol by weight for consumption on a defined premises for defined limited period of time for the purposes of sale during a festival.

(12) "Temporary Wine Permit" authorizes the sale of wine as defined in Act 120 of 1965 (as amended) and light wine (less than 5% alcohol by weight) for consumption on a defined premises for defined limited period of time for the purposes of sale during a festival.

(13) "Vinous beverage" means the fermented juices of fruits or a mixture containing the fermented juices of fruits containing more than five percent (5%) and not more than twenty-one percent (21%) alcohol by weight.

(14) "Wet" means a county that voted to permit the manufacture or sale of intoxicating liquor under Initiated Act No. 1 of 1942, as amended, §§ 3-8-201 -- 3-8-203 and 3-8-205 -- 3-8-209, or §§ 3-8-302 [repealed], 3-8-303, 3-8-304 [repealed], 3-8-305, and 3-8-306

Local option election – Dry County On-premises

(a) (1) A dry county or a city of the first class within the dry county may conduct an election to permit the sale of alcoholic beverages for on-premises consumption as prescribed in subdivision (a)(2) of this section.

(2) The sale of alcoholic beverages for under this section shall be limited to beer, hard cider, malt beverages, vinous beverages, and spirituous liquor for on-premises consumption at a hotel, restaurant, microbrewery restaurant or festival only, within the boundary limits of the dry county or city of the first class within the dry county that has approved the on-premise sale of alcohol. No sales to a consumer for off- premises consumption is allowed under this subchapter.

(b) (1) The petition procedure for a local option election for a dry county on-premises election shall be conducted under § 3-8-201 et seq.

(2) Signatures shall be obtained from fifteen percent (15%) of the qualified electors residing within the boundaries of the dry county or city of the first class within the dry county

(3) When fifteen percent (15%) of the qualified voters have filed petitions with the county clerk under this subdivision (b)(2), the county clerk shall determine within ten (10) days the sufficiency of the petitions under §3-8-205;

Conduct of Election

(a) The election process for a local option election for a dry county on-premises election shall be conducted pursuant to §3-8-201 et seq.

(b) The ballot title shall be in substantially the following form: "TO DETERMINE WHETHER OR NOT ALCOHOLIC BEVERAGES MAY BE SOLD FOR ON-PREMISES CONSUMPTION AS AUTHORIZED BY ARKANSAS LAW WITHIN (County or city of the first class)".

(c) The ballot shall be in substantially the following form:
" FOR the Sale of Alcoholic Beverages for on-premises consumption, As Authorized by Arkansas Law.
 AGAINST the Sale of Alcoholic Beverages for on-premises consumption, As Authorized by Arkansas Law."

(d) A majority vote of the qualified electors residing within the county or a city of the first class within the county shall determine whether or not alcoholic beverages may be sold for on-premises consumption or manufactured under subdivision (a)(2) of this section within the boundaries of the county or city of the first class;

Election Results – Effects

(A) (1) For the sale of alcoholic beverages for on-premises consumption as described herein then it shall be lawful for the Director of the Alcoholic Beverage Control Division to issue the relevant licenses or permits within the county or within the city of the first class within the county for which the election was held immediately after the certification of the results of an election permitting the sale or manufacture of alcoholic beverages under this section, as required by §3-8-206; or

(2) Against the sale for on-premises consumption or manufacture of alcoholic beverages as described under subdivision (a)(2) of this section, then it shall be unlawful for the Alcoholic Beverage Control Division to issue licenses or permits for such sale.

(b) A subsequent election under this section shall not be held in the same county or city of the first class within the county until a period of four (4) years has elapsed since the last local option election conducted under this section.

(c) To the extent any of the provisions of this section conflict with §3-8-201 et seq., the provisions of this section control.

Construction

It is expressly declared that this act shall be cumulative to the liquor laws now in force in this state and those are readopted herein