

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER
Statutory Authority: 4 Delaware Code, Section 304 (4 Del.C. §304)
4 DE Admin. Code 1008

FINAL

ORDER

Rule 1008 (Formerly Rule 19.1) Bottle Clubs - Licensing and Operation

SUMMARY OF THE EVIDENCE

1. Title 4, Section 304 of the Delaware Code authorizes the Alcoholic Beverage Control Commissioner to establish regulations in relation to all powers, duties and functions vested pursuant to the regulation of alcoholic beverages in Delaware.
2. Pursuant to 4 Del. C. § 304, the Alcoholic Beverage Control Commissioner intends to amend 4 DE Admin. C. Rule 1008 4.0. This regulation is being amended to update the seating at tables requirement for bottle clubs from thirty-five persons to not less than twelve persons.
3. Notice of the proposed regulation change was published in the November 1, 2021 edition of the *Delaware Register of Regulations*.
4. The Commissioner invited a period of thirty (30) days, until December 1, 2021, for written comment from the public.
5. No public comments were received for this regulation.
6. Having solicited and requested public comment on the proposed regulations in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101, et. seq., this is the Commissioner's Order adopting the proposed regulation, as published previously.

FINDINGS OF FACT

1. The Commissioner finds that it is necessary to adopt this proposed amended regulation to clarify the seating at tables requirement, in order for the regulations to be consistent with the Delaware Liquor Control Act. Prior changes to laws affecting restaurant seating were inconsistent with the seating requirement for bottle clubs which are licensed in establishments that operate as a restaurant, and this regulation change will align the seating requirements in both establishments.

DECISION AND ORDER TO AMEND THE REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to amend 4 DE Admin. Code 1008, and therefore the regulation shall be adopted in accordance with this Order. The regulation changes will be effective on April 11, 2022 following publication of this Order in the *Delaware Register of Regulations* on April 1, 2022.

IT IS SO ORDERED this 15th day of March, 2022 by the Office of the Delaware Alcoholic Beverage Control Commissioner.

The Honorable Jacqueline Paradee Mette, Esq.
Commissioner

Rule 1008 (Formerly Rule 19.1) Bottle Clubs - Licensing and Operation

1.0 Purpose and Scope

This Rule implements the 1982 and 1989 Amendments to the Liquor Control Act extending the jurisdiction of the Commissioner to so called "bottle clubs." 4 Del.C. §515, 515Aa, 902(7) and 554(aa), 60 Del. Laws, Ch. 232 (April 30, 1982), 67 Del. Laws, Ch. 122 (July 14, 1989). It applies to all businesses operated for profit where patrons carry onto the premises alcoholic liquors to be consumed thereon and removed by patrons upon their departure.

2.0 Definitions

"Bottle Club" means an establishment operated for profit or pecuniary gain where persons enter upon the premises for the purposes of consuming alcoholic liquors which are brought onto the premises by customers of the establishment and are consumed therein and removed by such persons upon their departure.

"Consume" in any tense, means the act of drinking or eating alcoholic beverages and includes possession of an alcoholic beverage with the present ability to drink or eat it.

"Operated for profit or pecuniary gain" means a business owned by a sole proprietor, partnership, corporation or other business association where such owner is not exempt from federal or state taxes on income on the profits (or losses) from such business, or the profits (or losses) from such business are for the benefit of an individual partnership, corporation or other business association which is not exempt from federal or state taxes on income. An organization qualified to receive a gathering license under 4 **Del.C.** §514, shall be deemed to be not for profit or pecuniary gain unless the profits or losses from such enterprise are otherwise subject to federal or state tax on income.

"Restaurant" means any establishment which is regularly used and kept open principally for the purpose of serving complete meals to persons for consideration, and which has seating at tables for ~~thirty-five (35)~~ 12 or more persons, and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook. The service of only such food and victuals as sandwiches or salads shall not be deemed to be the service of "meals" [4 **Del.C.** §101(35)]. In addition, a "restaurant" shall have a valid and current restaurant retailer license required by 30 **Del.C.** §2906.

3.0 General Policy

No establishment shall be operated for profit or pecuniary gain as a "bottle club" unless licensed by the Commissioner. Licensed "bottle clubs" shall, within the limits of their license, be held to the same standards of performance and financial responsibility as other types of license holders.

4.0 Standards of Operation for "Bottle Club"

4.1 Hours of Operation

4.1.1 An establishment operated as a "bottle club" shall not permit the consumption of alcoholic beverages on its premises after 2:00 a.m. or before 9:00 a.m. on any day. The presence of alcoholic liquors on the premises of a "bottle club" between the hours of 2:00 a.m. and 9:00 a.m. shall be prima facie evidence of a violation.

4.2 Service of General Public.

4.2.1 A "bottle club" may require membership upon payment of a reasonable fee, but approval of such membership shall not be unreasonably denied. A club shall not charge an admission charge or fee, but may charge a cover or minimum during hours when live entertainment is actually being presented.

4.3 Service of Food

4.3.1 A reasonable selection of food shall be available from a written menu or menu board at all hours when alcoholic beverages are being consumed. The selection of foods shall include a choice of sandwiches, entrees, and non-alcoholic beverages.

4.4 Service of Persons Under 21

4.4.1 Minors may be admitted to the premises of a "bottle club." Minors may not consume alcoholic beverages at any time. It shall be a rebuttable presumption that minors found on the premises or departing therefrom who are found to have consumed alcoholic liquors or are in possession of alcoholic liquors, consumed or possessed such alcoholic liquors on the premises.

4.5 Service of Alcoholic Liquors.

4.5.1 A "bottle club" may serve food, non-alcoholic beverages, mixers and ice and may charge for such service. "Bottle clubs" may not mix or provide bartender service to patrons, nor may a "bottle club" chill or keep alcoholic liquors for customers. A "bottle club" shall not serve alcoholic liquors.

4.6 Presence of Intoxicated Persons on Premises

4.6.1 A "bottle club" shall not permit an intoxicated person to remain on its premises.

4.7 Design and Layout

4.7.1 In a "bottle club" there shall be seating at tables for not less than ~~thirty-five~~ 12 persons. Seats at a bar shall not exceed 25% of the dining seats of the establishment.

19 DE Reg. 775 (02/01/16)

25 DE Reg. 960 (04/01/22) (Final)