

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

PROPOSED

PUBLIC NOTICE

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

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 4 **Del.C.** §304, the Delaware Alcoholic Beverage Control Commissioner proposes updates to 4 **DE Admin. Code** 1008, governing the standards of a restaurant and bottle club, specifically concerning the ability for bottle club licensees to provide bartending service, and to align the dining/bar seat ratio with licensed restaurants.

In accordance with 29 **Del.C.** §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should direct them to the following address:

Doug Denison
Deputy Commissioner
Office of the Delaware Alcoholic Beverage Control Commissioner
820 N. French St., 3rd Floor
Wilmington, DE 19801

Comments may also be directed via electronic mail to OABCCrulescomments@delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware Alcoholic Beverage Control Commissioner no later than 4 p.m. on January 31, 2024.

The action concerning determination of whether to adopt the proposed regulation will be based upon consideration of the written comments and any other written materials filed by the public.

Background

The Delaware Alcoholic Beverage Control Commissioner is authorized by the General Assembly of the State of Delaware, to establish, by rules and regulations, an effective control of the business of manufacture, sale, dispensation, distribution and importation of alcoholic liquors within and into the State of Delaware, including the time, place and manner in which alcoholic liquors shall be sold and dispensed, not inconsistent with Title 4 of the Delaware Code or with any other law of the State. The Commissioner is further authorized to adopt and promulgate rules and regulations not inconsistent with Title 4 or of any other law of the State, and such rules and regulations shall have the force and effect of law; provided, however that no such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof; and provided further, however, that such rules and regulations, as established by the Commissioner, shall focus primarily on public safety and the best interests of the consumer and shall not unduly restrict competition within the alcoholic beverage industry.

Further, the Commissioner shall determine and publish standards for the manner in which bottle club licensees are permitted to allow the consumption of alcoholic liquors therein. A "bottle club" license authorized by Section 515A, Title 4 of the Delaware Code shall be granted to persons doing business in an establishment meeting the standards of a restaurant as defined by Title 4, and to persons renting premises to customers for holding weddings or other social functions where adequate food is provided, as determined by the Commissioner, either by the customer or a licensed caterer.

Summary of Proposal

The Delaware Alcoholic Beverage Control Commissioner proposes to update 4 **DE Admin. Code** 1008 to conform with the General Assembly's statutory changes to 4 **Del.C.** §515A, and to permit licensed bottle club owners to choose whether to provide bartender services and serve alcoholic liquors provided for a social gathering by a customer renting the premises that chooses not to use a licensed caterer for the social gathering.

In 2021, the General Assembly amended the bottle club license statute by adding subsection 515A(c)(2), which permits a person renting a premises to customers to hold weddings and other social gatherings to be licensed as a bottle

club, so long as adequate food is provided for the gatherings. The Commissioner's current rules on bottle clubs do not address social gatherings where alcoholic liquors are permissible and prevent bottle club licensees from providing bartender service or serving alcoholic liquors when the customer renting the premises chooses to provide the alcohol, rather than use a Delaware licensed caterer. The Commissioner determines that this provision of 4 **DE Admin. Code** 1008 requires updating to better address the change to the statute.

Further, the Commissioner proposes to update the ratio of dining to bar seating in order to align bottle club licensees that operate as restaurants with Delaware restaurant licensees.

Statutory Authority 4 Del.C. §304

4 **Del.C.** §304 enables the Delaware Alcoholic Beverage Control Commissioner to adopt and promulgate rules and regulations not inconsistent with Title 4 of the Delaware Code and all such rules and regulations shall have the force and effect of law; provided, that no such rule or regulation shall extend, modify or conflict with any law of the State of Delaware or the reasonable implications thereof. The Commissioner shall also determine and publish standards for the manner in which the dining room or dining rooms of a restaurant shall be equipped in order to be allowed to exercise the privilege of the sale of alcoholic liquors therein.

1000 General Establishments and Clubs

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

1.0 Purpose and Scope

This ~~Rule~~ regulation implements the 1982 and 1989 ~~Amendments~~ amendments to the Delaware Liquor Control Act extending the jurisdiction of the Commissioner to ~~so-called "bottle clubs."~~ bottle clubs. 4 **Del.C.** §515, 515Aa, 902(7) and ~~554(aa)~~ §§515, 515A(a), 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

The following words and terms, when used in this regulation, have the following meaning:

"Bottle Club 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. A bottle club also includes the premises rented to customers for holding weddings or other social gatherings, pursuant to 4 Del.C. §515A(c)(2).

"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 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)]~~ (4 **Del.C.** §101(40)). In addition, a ~~"restaurant"~~ restaurant shall have a valid and current restaurant retailer license required by 30 **Del.C.** §2906.

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

3.0 General Policy

No establishment shall be operated for profit or pecuniary gain as a ~~"bottle club"~~ bottle club unless licensed by the Commissioner. Licensed ~~"bottle clubs"~~ 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~~" Bottle Club

4.1 Hours of Operation

4.1.1 An establishment operated as a "~~bottle club~~" bottle club shall not permit the consumption of alcoholic beverages on its premises after ~~2:00~~ 2 a.m. or before ~~9:00~~ 9 a.m. on any day.

4.1.2 The presence of alcoholic liquors on the premises of a "~~bottle club~~" bottle club between the hours of ~~2:00~~ 2 a.m. and ~~9:00~~ 9 a.m. shall be prima facie evidence of a violation.

4.2 Service of General Public.

4.2.1 A "~~bottle club~~" bottle club may require membership upon payment of a reasonable fee, but approval of such membership shall not be unreasonably denied.

4.2.2 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.

4.3.2 If alcoholic liquors will be provided by the customer and not a licensed off-site caterer, a bottle club licensed pursuant to 4 Del.C. §515A(c)(2) shall submit for Commissioner approval at least 20 days prior to a wedding or other social gathering:

4.3.2.1 A signed contract with the customer renting the premises that shows the date and time of the event and the anticipated number of invited guests;

4.3.2.2 A signed contract with the entity providing adequate food for the social gathering, as determined by the Commissioner; and

4.3.2.3 A list of the alcoholic liquors to be provided by the customer that will be served during the gathering.

4.4 Service of Persons Under 21

4.4.1 ~~Minors~~ Persons under 21 years of age may be admitted to the premises of a "~~bottle club.~~" bottle club.

4.4.2 ~~Minors~~ Persons under 21 years of age may not consume alcoholic beverages at any time, whether or not the bottle club licensee has provided bartending services pursuant to 4 DE Admin. Code 1008, subsection 4.5.2 of this regulation.

4.4.3 It shall be a rebuttable presumption that ~~minors~~ persons under 21 years of age found on the premises or departing therefrom who are found to have consumed alcoholic ~~liquors~~ liquors, or are in possession of alcoholic liquors, consumed or possessed such alcoholic liquors on the licensed bottle club premises in violation of the Delaware Liquor Control Act.

4.5 Service of Alcoholic Liquors.

4.5.1 A "~~bottle club~~" 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.

4.5.2 A bottle club renting its premises for weddings or other social gatherings pursuant to 4 Del.C. §515A(c)(2) may provide bartending services and serve alcoholic liquors provided by the customer and may charge for such services.

4.5.2.1 Bartending services must be included in the materials submitted to the Commissioner for review and approval pursuant to 4 DE Admin. Code 1008, subsection 4.3.2 of this regulation.

4.5.2.2 The servers provided by the bottle club shall be certified as responsible alcoholic beverage servers pursuant to the Delaware Liquor Control Act. Only certified servers may provide bartending services which may also include bar area set-up and breakdown.

4.5.3 A bottle club may not keep alcoholic liquors for customers after the conclusion of the customer's use of the premises. Any alcoholic liquors remaining on the premises 2 hours after the conclusion of the event, or 1 hour after the customer has left the premises, shall be considered abandoned property and the bottle club licensee shall dispose of the alcoholic liquors immediately.

4.5.4 A bottle club licensee may permit a customer renting the premises pursuant to a contract approved by the Commissioner to bring alcoholic liquors onto the premises up to 36 hours prior to the event, provided the alcoholic liquors are stored in locked storage to which the customer and the licensee possess the only keys. The licensee's contract with the customer may designate a specific person, other than the customer, for this task. The licensee shall confirm the alcoholic liquors brought onto the premises are consistent with the list provided to the Commissioner pursuant to 4 DE Admin. Code 1008, subsection 4.3.2.3 of this

regulation, and any quantity or type not approved by the Commissioner must be removed from the premises.

4.5.5 Only the customer renting the bottle club licensed premises, or the customer's designee identified in the contract with the licensee, may enter and leave the premises with alcoholic liquors. Guests of the customer renting the premises may not enter or leave the premises with alcoholic liquors.

4.6 Presence of Intoxicated Persons on ~~Premises~~ Premises.

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

4.7 Design and ~~Layout~~ Layout.

4.7.1 In a "~~bottle club~~" bottle club there shall be seating at tables for not less than 12 persons. Seats at a bar shall not exceed ~~25%~~ 1/3 of the dining seats of the establishment.

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

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

27 DE Reg. 511 (01/01/24) (Prop.)