

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

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 to introduce an updated definition within Rule 1008, governing the standards of a restaurant and bottle club, specifically concerning the number of dining seats at tables on the premises.

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:

Wendy Hudson
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 December 1, 2021.

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 the dining room or dining rooms of a hotel, restaurant or club shall be equipped in order to be allowed to exercise the privilege of the sale 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 food is also provided either by the customer or a licensed caterer.

Summary of Proposal

The purpose of this notice is to advise the public that the Delaware Alcoholic Beverage Control Commissioner proposes to promulgate an updated definition within Rule 1008 with respect to the minimum number of dining room seats on the premises of a bottle club license. The statutory definition of a "restaurant" at Title 4, Section 101(39) of the Delaware Code was previously changed from seating at tables for 35 or more persons to seating at tables for 12 or more persons: "a 'restaurant' means any establishment which is regularly used and kept open 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." A bottle club license can be granted only to persons doing business in an establishment that meets the standards of a restaurant or to persons renting premises to

customers for weddings or other similar social functions.

This proposed regulation updates Rule 1008 as to dining room seats at tables, from 35 or more to 12 or more on the premises of a bottle club license. The Commissioner has determined the previous restaurant change from 35 seats to 12 seats should also apply to bottle clubs in order to maintain consistency in the rules that apply to licensed establishments. Title 4, Section 101(39) of the Delaware Code defines a restaurant, in relevant part, as having dining seats at tables for 12 or more people. Standards for a bottle club provide there shall be seating at tables for not less than thirty-five persons. This update to Rule 1008 will make the rule consistent with Section 101(39) and subsection 4.7.1 of Rule 1008.

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.

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. 502 (11/01/21) (Prop.)