

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

FINAL

ORDER

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

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. 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 addition, the Commissioner proposed to update the ratio of dining to bar seating in order to align bottle club licenses that operate as restaurants with Delaware restaurant licensees.
3. Notice of the proposed regulation change was published in the January 1, 2024 edition of the *Delaware Register of Regulations*, and the public was given thirty (30) days to provide written comment.
4. Because the published notice included an outdated email address for submitting public comments, a general notice was published February 1, 2024 to afford the public an additional thirty (30) days to submit written comment to a current email address, until March 4, 2024.
5. Public comments were received for the proposed updates to the regulation, all of which are supportive and positive of the changes.
6. Having provided the opportunity for public comment on the proposed regulation in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101, et. seq., the Commissioner determines minor, non-substantive changes are needed, as follows: (a) in 4.1.1 and 4.1.2, change "9 a.m." to "8 a.m."; (b) in 4.3.1, add "sides," after the word "entrees"; and (c) in 4.3.2, change "20" days to "10" days.
7. A copy of the Final Regulation at 4 DE Admin. Code 1008 with the above non-substantive changes is attached hereto.

FINDINGS OF FACT

The Commissioner finds that it is necessary to adopt the proposed regulation with minor, non-substantive edits in order 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. Also, the Commissioner proposed to update the ratio of dining to bar seating in order to align bottle club licenses that operate as restaurants with Delaware restaurant licensees.

NARRATIVE ASSESSEMENT OR STATEMENT

Pursuant to 29 Del.C. § 10118(b)(3), the Commissioner reviewed the proposed changes and states that an assessment is not practical for this regulation, or that an impact, if any, would be de minimis on the achievement of the State's greenhouse gas emissions reduction targets and the State's resiliency to climate change.

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 in which the text of the final regulation shall be in the form referenced herein and therefore the regulation shall be adopted in accordance with this Order. The effective date of this Order shall be ten days after the publication of this Order in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 6th day of September 2024 by the Office of the Delaware Alcoholic Beverage Control Commissioner.

The Honorable Jacqueline Paradee Mette, Esq.
Commissioner

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 8] 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 8] 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, **[sides,]** 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 10]** 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.
 - 4.7.4 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)

28 DE Reg. 321 (10/01/24) (Final)