

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HOUSE BILL 2740

AN ACT

AMENDING SECTIONS 4-207, 4-209 AND 4-213, ARIZONA REVISED STATUTES; RELATING TO LIQUOR LICENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 4-207, Arizona Revised Statutes, is amended to
3 read:
4 4-207. Restrictions on licensing premises near school or church
5 buildings: definition
6 A. A retailer's license shall not be issued for any premises which
7 are, at the time the license application is received by the director, within
8 three hundred horizontal feet of a church, within three hundred horizontal
9 feet of a public or private school building with kindergarten programs or any
10 of grades one through twelve or within three hundred horizontal feet of a
11 fenced recreational area adjacent to such school building. This section does
12 not prohibit the renewal of a valid license issued pursuant to this title if,
13 on the date that the original application for the license is filed, the
14 premises were not within three hundred horizontal feet of a church, within
15 three hundred horizontal feet of a public or private school building with
16 kindergarten programs or any of grades one through twelve or within three
17 hundred horizontal feet of a fenced recreational area adjacent to such school
18 building.
19 B. Subsection A of this section does not apply to a:
20 1. Restaurant issued a license pursuant to section 4-205.02.
21 2. Special event license issued pursuant to section 4-203.02.
22 3. Hotel-motel issued a license pursuant to section 4-205.01.
23 4. Government license issued pursuant to section 4-205.03.
24 5. Fenced playing area of a golf course issued a license pursuant to
25 this article.
26 C. Notwithstanding subsection A of this section:
27 1. A spirituous liquor license which is validly issued and which is,
28 on the date an application for a transfer is filed, within three hundred
29 horizontal feet of a church, within three hundred horizontal feet of a public
30 or private school building with kindergarten programs or any of grades one
31 through twelve or within three hundred horizontal feet of a fenced
32 recreational area adjacent to such school building may be transferred person
33 to person pursuant to sections 4-201, 4-202 and 4-203 and remains in full
34 force until the license is terminated in any manner, unless renewed pursuant
35 to section 4-209, subsection A.
36 2. A person may be issued a spirituous liquor license pursuant to
37 sections 4-201, 4-202 and 4-203 of the same class for premises which have a
38 nontransferable spirituous liquor license validly issued if the premises are,
39 on the date an application for such license is filed, within three hundred
40 horizontal feet of a church, within three hundred horizontal feet of a public
41 or private school building with kindergarten programs or any of grades one
42 through twelve or within three hundred horizontal feet of a fenced
43 recreational area adjacent to such school building and the license remains in
44 full force until the license is terminated in any manner, unless renewed
45 pursuant to section 4-209, subsection A.

1 3. A person may be issued a liquor store license pursuant to sections
2 4-201, 4-202, 4-203 and 4-206.01 for premises which have a beer and wine
3 store license validly issued if the premises, on the date an application for
4 such license is filed, are within three hundred horizontal feet of a church,
5 within three hundred horizontal feet of a public or private school building
6 with kindergarten programs or any of grades one through twelve or within
7 three hundred horizontal feet of a fenced recreational area adjacent to such
8 school building and the license remains in full force until the license is
9 terminated in any manner, unless renewed pursuant to section 4-209,
10 subsection A.

11 4. A PERSON MAY BE ISSUED A BAR OR BEER AND WINE BAR LICENSE PURSUANT
12 TO SECTIONS 4-201, 4-202, 4-203 AND 4-206.01 FOR PREMISES THAT HAVE A
13 RESTAURANT LICENSE VALIDLY ISSUED IF THE PREMISES, ON THE DATE THE
14 APPLICATION FOR THE BAR OR BEER AND WINE BAR LICENSE IS FILED, ARE WITHIN
15 THREE HUNDRED HORIZONTAL FEET OF A CHURCH, WITHIN THREE HUNDRED HORIZONTAL
16 FEET OF A PUBLIC OR PRIVATE SCHOOL BUILDING WITH KINDERGARTEN PROGRAMS OR ANY
17 OF GRADES ONE THROUGH TWELVE OR WITHIN THREE HUNDRED HORIZONTAL FEET OF A
18 FENCED RECREATIONAL AREA ADJACENT TO SUCH SCHOOL BUILDING ONLY IF THE CHURCH
19 OR SCHOOL BEGAN ITS OPERATION AFTER THE ISSUANCE OF THE RESTAURANT LICENSE
20 AND THE BAR OR BEER AND WINE BAR LICENSE IS TO REPLACE THE RESTAURANT LICENSE
21 PURSUANT TO SECTION 4-213, SUBSECTION C, PARAGRAPH 2 OR 3.

22 D. For the purposes of this section, "church" means a building which
23 is erected or converted for use as a church, where services are regularly
24 convened, which is used primarily for religious worship and schooling and
25 which a reasonable person would conclude is a church by reason of design,
26 signs or architectural or other features.

27 Sec. 2. Section 4-209, Arizona Revised Statutes, is amended to read:
28 4-209. Fees for license, application, issuance, renewal and
29 transfer; late renewal penalty; seasonal operation;
30 surcharges

31 A. A fee shall accompany an application for an original license or
32 transfer of a license, or in case of renewal, shall be paid in advance.
33 Every license expires annually. A licensee who fails to renew the license on
34 or before the due date shall pay a penalty of one hundred fifty dollars which
35 the licensee shall pay with the renewal fee. A license renewal that is
36 deposited, properly addressed and postage prepaid in an official depository
37 of the United States mail on or before the due date shall be deemed filed and
38 received by the department on the date shown by the postmark or other
39 official mark of the United States postal service stamped on the envelope.
40 If the due date falls on a Saturday, Sunday or other legal holiday, the
41 renewal shall be considered timely if it is received by the department on the
42 next business day. The director may waive a late renewal penalty if good
43 cause is shown by the licensee. A licensee who fails to renew the license on
44 or before the due date may not sell, purchase or otherwise deal in spirituous
45 liquor until the license is renewed. A license which is not renewed within

1 sixty days after the due date is deemed terminated. The director may renew
2 the terminated license if good cause is shown by the licensee. An
3 application fee for an original license or the transfer of a license shall be
4 one hundred dollars, which shall be retained by this state.

5 B. Issuance fees for original licenses shall be:

6 1. For an in-state producer's license, to manufacture or produce
7 spirituous liquor in this state, one thousand five hundred dollars.

8 2. Except as provided in paragraph 15 of this subsection, for an
9 out-of-state producer's, exporter's, importer's or rectifier's license, two
10 hundred dollars.

11 3. For a domestic microbrewery license, three hundred dollars.

12 4. For a wholesaler's license, to sell spirituous liquors, one
13 thousand five hundred dollars.

14 5. For a government license issued in the name of a county, city or
15 town, one hundred dollars.

16 6. For a bar license, which is an on-sale retailer's license to sell
17 all spirituous liquors primarily by individual portions and in the original
18 containers, one thousand five hundred dollars.

19 7. For a beer and wine bar license, which is an on-sale retailer's
20 license to sell beer and wine primarily by individual portions and in the
21 original containers, one thousand five hundred dollars.

22 8. For a conveyance license issued to an operating railroad company,
23 to sell all spirituous liquors in individual portions or in the original
24 containers on all passenger trains operated by the railroad company, or to an
25 operating airline company, to sell or serve spirituous liquors solely in
26 individual portions on all passenger planes operated by the airline company,
27 or to a boat operating in the waters of this state, to sell all spirituous
28 liquors in individual portions or in the original containers for consumption
29 on the boat, one thousand five hundred dollars.

30 9. For a liquor store license, which is an off-sale retailer's license
31 to sell all spirituous liquors, one thousand five hundred dollars.

32 10. For a beer and wine store license, which is an off-sale retailer's
33 license to sell beer and wine, one thousand five hundred dollars.

34 11. For a hotel-motel license issued as such, to sell and serve
35 spirituous liquors solely for consumption on the licensed premises of the
36 hotel or motel, one thousand five hundred dollars.

37 12. For a restaurant license issued as such, to sell and serve
38 spirituous liquors solely for consumption on the licensed premises of the
39 restaurant, one thousand five hundred dollars.

40 13. For a domestic farm winery license, one hundred dollars.

41 14. For a club license issued in the name of a bona fide club qualified
42 under this title to sell all spirituous liquors on-sale, one thousand
43 dollars.

44 15. For an out-of-state winery that sells not more than fifty cases of
45 wine in this state in a calendar year, twenty-five dollars.

1 C. The department may issue licenses with staggered renewal dates to
2 distribute the renewal ~~work-load~~ WORKLOAD as uniformly as practicable
3 throughout the twelve months of the calendar year. If a license is issued
4 less than six months before the scheduled renewal date of the license, as
5 provided by the department's staggered license renewal system, one-half of
6 the annual license fee shall be charged.

7 D. The annual fees for licenses shall be:

8 1. For an in-state producer's license, to manufacture or produce
9 spirituous liquors in this state, three hundred fifty dollars.

10 2. Except as provided in paragraph 15 of this subsection, for an
11 out-of-state producer's, exporter's, importer's or rectifier's license, fifty
12 dollars.

13 3. For a domestic microbrewery license, three hundred dollars.

14 4. For a wholesaler's license, to sell spirituous liquors, two hundred
15 fifty dollars.

16 5. For a government license issued to a county, city or town, one
17 hundred dollars.

18 6. For a bar license, which is an on-sale retailer's license to sell
19 all spirituous liquors primarily by individual portions and in the original
20 containers, one hundred fifty dollars.

21 7. For a beer and wine bar license, which is an on-sale retailer's
22 license to sell beer and wine primarily by individual portions and in the
23 original containers, seventy-five dollars.

24 8. For a conveyance license issued to an operating railroad company,
25 to sell all spirituous liquors in individual portions or in the original
26 containers on all passenger trains operated by the railroad company, or to an
27 operating airline company, to sell or serve spirituous liquors solely in
28 individual portions on all passenger planes operated by the airline company,
29 or to a boat operating in the waters of this state, to sell all spirituous
30 liquor in individual portions or in the original containers for consumption
31 on the boat, two hundred twenty-five dollars.

32 9. For a liquor store license, which is an off-sale retailer's license
33 to sell all spirituous liquors, fifty dollars.

34 10. For a beer and wine store license, which is an off-sale retailer's
35 license to sell beer and wine, fifty dollars.

36 11. For a hotel-motel license issued as such, to sell and serve
37 spirituous liquors solely for consumption on the licensed premises of the
38 hotel or motel, five hundred dollars.

39 12. For a restaurant license issued as such, to sell and serve
40 spirituous liquors solely for consumption on the licensed premises of the
41 restaurant, five hundred dollars, AND FOR A RESTAURANT LICENSE THAT IS
42 PERMITTED TO CONTINUE OPERATING AS A RESTAURANT PURSUANT TO SECTION 4-213,
43 SUBSECTION E, AN ADDITIONAL AMOUNT ESTABLISHED BY THE DIRECTOR. THE
44 DEPARTMENT SHALL RETAIN THE ENTIRE ADDITIONAL AMOUNT AND THE DEPARTMENT IS

1 NOT REQUIRED TO TRANSFER ALL OR ANY PORTION OF THIS AMOUNT TO THE STATE
2 TREASURER FOR DEPOSIT IN THE STATE GENERAL FUND.

3 13. For a domestic farm winery license, one hundred dollars.

4 14. For a club license issued in the name of a bona fide club qualified
5 under this title to sell all spirituous liquors on-sale, one hundred fifty
6 dollars.

7 15. For an out-of-state winery that sells not more than twenty-five
8 cases of wine in this state in a calendar year, twenty-five dollars.

9 E. Where the business of an on-sale retail licensee is seasonal, not
10 extending over periods of more than six months in any calendar year, the
11 licensee may designate the periods of operation, and a license may be granted
12 for those periods only, upon payment of one-half of the fee prescribed in
13 subsection D of this section.

14 F. Transfer fees from person to person for licenses transferred
15 pursuant to section 4-203, subsection C shall be three hundred dollars.

16 G. Transfer fees from location to location, as provided for in section
17 4-203, shall be one hundred dollars.

18 H. Assignment fees for a change of agent, as provided for in section
19 4-202, subsection C, shall be one hundred dollars, except that where a
20 licensee holds multiple licenses the assignment fee for the first license
21 shall be one hundred dollars and the assignment fee for all remaining
22 licenses transferred to the same agent shall be fifty dollars each, except
23 that the aggregate assignment fees shall in no event exceed one thousand
24 dollars.

25 I. No fee shall be charged by the department for an assignment of a
26 liquor license in probate or an assignment pursuant to the provisions of a
27 will or pursuant to a judicial decree in a domestic relations proceeding
28 which assigns ownership of a business which includes a spirituous liquor
29 license to one of the parties in the proceeding. In the case of
30 nontransferable licenses no fee shall be charged by the department for the
31 issuance of a license for a licensed business pursuant to a transfer of the
32 business in probate or pursuant to the provisions of a will or pursuant to a
33 judicial decree in a domestic relations proceeding which assigns ownership of
34 the business to one of the parties in the proceeding.

35 J. The director shall assess a surcharge of thirty dollars on all
36 licenses prescribed in subsection D, paragraphs 6, 7 and 12 of this section.
37 Monies from the surcharge shall be used by the department exclusively for the
38 costs of an auditor and support staff to review compliance by applicants and
39 licensees with the requirements of section 4-205.02, subsection E. The
40 department shall assess the surcharge as part of the annual license renewal
41 fee.

42 K. The director shall assess a surcharge of thirty-five dollars on all
43 licenses prescribed in this section. Monies from the surcharge shall be used
44 by the department exclusively for the costs of an enforcement program to
45 investigate licensees who have been the subject of multiple complaints to the

1 department. The enforcement program shall respond to complaints against
2 licensees by neighborhood associations, by neighborhood civic groups and from
3 municipal and county governments. The department shall assess the surcharge
4 as part of the annual license renewal fee.

5 L. The director shall assess a surcharge of twenty dollars on all
6 licenses prescribed in subsection D, paragraphs 11 and 12 of this section and
7 thirty-five dollars on all other licenses prescribed in this section. Monies
8 from the surcharge and from surcharges imposed pursuant to subsection K of
9 this section shall be used by the department exclusively for the costs of a
10 neighborhood association interaction and liquor enforcement management unit.
11 The unit shall respond to complaints from neighborhood associations,
12 neighborhood civic groups and local governing authorities regarding liquor
13 violations. The director shall report the unit's activities to the board at
14 each board meeting or as the board may direct.

15 Sec. 3. Section 4-213, Arizona Revised Statutes, is amended to read:

16 4-213. Restaurant audit

17 A. The director may require a restaurant to submit an audit of its
18 records to demonstrate compliance with section 4-205.02. The director shall
19 not require AN ESTABLISHMENT TO SUBMIT TO such an audit more than once a year
20 after the initial twelve months of operation EVEN IF THE ESTABLISHMENT IS
21 ALLOWED TO CONTINUE OPERATING AS A RESTAURANT PURSUANT TO SUBSECTION E OF
22 THIS SECTION.

23 B. Except as provided in subsection D of this section, the department
24 shall audit accounts, records and operations of a licensee that cover a
25 twelve month period. An establishment that averages at least forty per cent
26 of its gross revenue from the sale of food during the twelve month audit
27 period shall be deemed to comply with the gross revenue requirements of
28 section 4-205.02. The twelve month audit period shall fall within the
29 sixteen months immediately preceding the beginning of the audit.

30 C. If the audit reveals that the licensee did not meet the definition
31 of a restaurant as prescribed in section 4-205.02 AND THE PERCENTAGE OF FOOD
32 SALES DETERMINED BY THE AUDIT WAS:

33 1. LESS THAN THIRTY PER CENT, the department shall IMMEDIATELY revoke
34 the license.

35 2. AT LEAST THIRTY PER CENT BUT LESS THAN THIRTY-SEVEN PER CENT, THE
36 DEPARTMENT SHALL ALLOW THE LICENSEE A SIX MONTH PERIOD TO EITHER:

37 (a) REPLACE THE LICENSE WITH A BAR OR BEER AND WINE BAR LICENSE,
38 EXCEPT THAT, AT THE END OF THAT SIX MONTH PERIOD, THE DEPARTMENT SHALL REVOKE
39 THE RESTAURANT LICENSE OR THE LICENSEE SHALL SURRENDER THE RESTAURANT
40 LICENSE.

41 (b) OBTAIN PERMISSION FROM THE DEPARTMENT TO CONTINUE AS A RESTAURANT
42 LICENSE PURSUANT TO SUBSECTION E OF THIS SECTION.

43 3. AT LEAST THIRTY-SEVEN PER CENT BUT LESS THAN FORTY PER CENT, THE
44 LICENSEE SHALL BE GRANTED A PERIOD OF ONE YEAR TO INCREASE THE FOOD
45 PERCENTAGE TO AT LEAST FORTY PER CENT. IF THE LICENSEE DOES NOT INCREASE THE

1 PERCENTAGE OF FOOD SALES TO AT LEAST FORTY PER CENT, THE DEPARTMENT SHALL
2 ALLOW THE LICENSEE TO EITHER:

3 (a) REPLACE THE LICENSE WITHIN SIX MONTHS WITH A BAR OR BEER AND WINE
4 BAR LICENSE, EXCEPT THAT, AT THE END OF THE SIX MONTH PERIOD, THE DEPARTMENT
5 SHALL REVOKE THE RESTAURANT LICENSE OR THE LICENSEE SHALL SURRENDER THE
6 RESTAURANT LICENSE.

7 (b) OBTAIN PERMISSION FROM THE DEPARTMENT TO CONTINUE AS A RESTAURANT
8 LICENSE PURSUANT TO SUBSECTION E OF THIS SECTION.

9 D. The department may conduct an audit of a licensee described in
10 section 4-209, subsection B, paragraph 12 after twelve months following the
11 beginning of operations as a restaurant by the licensee to determine
12 compliance by the licensee with section 4-205.02, except that the department
13 may conduct an audit of a licensee within the first twelve months of
14 operation if the licensee has made a substantial modification in the
15 restaurant equipment, service or entertainment items or seating capacity
16 during that twelve month period, in which event the department may conduct
17 the audit for a period of less than twelve months.

18 E. A RESTAURANT LICENSEE MAY MAINTAIN ITS RESTAURANT LICENSE IF ITS
19 FOOD SALES ARE AT LEAST THIRTY PER CENT AND LESS THAN FORTY PER CENT AND THE
20 DEPARTMENT APPROVES OF THE MAINTENANCE OF THE RESTAURANT LICENSE PURSUANT TO
21 THIS SUBSECTION AND SUBSECTIONS F AND G OF THIS SECTION. THE DEPARTMENT MAY
22 APPROVE A REQUEST SUBMITTED BY THE LICENSEE TO MAINTAIN ITS RESTAURANT
23 LICENSE ONLY IF ALL OF THE FOLLOWING APPLY AT THE TIME THE LICENSEE FILES ITS
24 REQUEST WITH THE DEPARTMENT:

25 1. THE RESTAURANT HAS A SUFFICIENT NUMBER OF COOKS, FOOD PREPARATION
26 PERSONNEL AND WAIT STAFF TO PREPARE AND PROVIDE RESTAURANT SERVICES.

27 2. THE RESTAURANT'S EQUIPMENT IS OF A SUFFICIENT GRADE AND THE SIZE OF
28 THE RESTAURANT'S KITCHEN IS APPROPRIATE TO THE MENU OFFERED.

29 3. THE MENU IS OF A TYPE CONSISTENT WITH A RESTAURANT OPERATION. IN
30 MAKING A DETERMINATION PURSUANT TO THIS PARAGRAPH, THE DEPARTMENT MAY
31 CONSIDER THE PROPORTION OF FOOD SALES TO ALCOHOL SALES, THE PRICE OF
32 SPIRITUOUS LIQUOR BEVERAGES AND FOOD SERVED BY THE LICENSEE AND WHETHER THE
33 LICENSEE PROVIDES REDUCED PRICE OR COMPLEMENTARY FOOD AND BEVERAGES.

34 4. THE AGGREGATE AREA OF ALL DANCE FLOORS ON THE PREMISES IS NOT
35 GREATER THAN TEN PER CENT OF THE TOTAL FLOOR SPACE OF THE PUBLIC AREA OF THE
36 PREMISES.

37 5. NOT MORE THAN TWENTY PER CENT OF THE PUBLIC AREA FLOOR SPACE
38 CONSISTS OF POOL TABLES, DART OR ARCADE GAMES, BARSTOOLS, COCKTAIL TABLES AND
39 SIMILAR TYPES OF SEATING.

40 6. THE NAME OF THE RESTAURANT DOES NOT INCLUDE TERMS ASSOCIATED WITH
41 ALCOHOL CONSUMPTION SUCH AS "BAR", "TAVERN", "PUB", "SPIRITS", "CLUB",
42 "LOUNGE", "CABARET", "CANTINA" OR "SALOON".

43 7. DISPOSABLE DINNERWARE AND SMALLWARE, INCLUDING DINING UTENSILS, IS
44 NOT USED EXCEPT IN OUTDOOR AREAS.

1 F. IF THE DEPARTMENT INTENDS TO APPROVE A RESTAURANT'S CONTINUATION OF
2 OPERATION PURSUANT TO SUBSECTION E OF THIS SECTION, THE DEPARTMENT SHALL
3 ADVISE THE GOVERNING BODY OF THE CITY OR TOWN IF THE PREMISES IS WITHIN THE
4 INCORPORATED LIMITS OF A CITY OR TOWN OR THE COUNTY OF THE DEPARTMENT'S
5 INTENT. IF THE LOCAL JURISDICTION THROUGH ITS GOVERNING BODY OR ITS
6 AUTHORIZED AGENT DOES NOT OBJECT WITHIN SIXTY DAYS, THE LICENSEE MAY CONTINUE
7 ITS OPERATION AS A RESTAURANT. IF THE DEPARTMENT INTENDS TO DISAPPROVE A
8 RESTAURANT'S CONTINUATION OF OPERATION PURSUANT TO SUBSECTION E OF THIS
9 SECTION, OR IF THE LOCAL JURISDICTION OR ITS AGENT TIMELY OBJECTS TO ITS
10 CONTINUATION, THE DEPARTMENT SHALL SET A HEARING BEFORE THE BOARD. THE BOARD
11 SHALL DETERMINE WHETHER THE RESTAURANT MAY CONTINUE ITS OPERATION BASED ON
12 CONSIDERATION OF THE CRITERIA LISTED IN SUBSECTION E OF THIS SECTION.

13 G. AS A CONDITION OF CONTINUING OPERATION AS A RESTAURANT UNDER
14 SUBSECTION E OF THIS SECTION, THE DEPARTMENT MAY REQUIRE THE LICENSEE TO
15 SPECIFICALLY ACKNOWLEDGE THE REPRESENTATIONS MADE BY THE LICENSEE REGARDING
16 ITS OPERATIONS IN SUPPORT OF THE LICENSEE'S CONTINUING OPERATION AS A
17 RESTAURANT. IF THE LICENSEE CHANGES ITS OPERATION IN ANY WAY THAT MATERIALLY
18 AND DETRIMENTALLY AFFECTS THE REPRESENTATIONS MADE BY THE LICENSEE, THE
19 DEPARTMENT MAY AUDIT THE LICENSEE OR REVOKE THE LICENSE WITHOUT AN AUDIT.

20 Sec. 4. Applicability of audit provisions

21 Section 4-213, Arizona Revised Statutes, as amended by this act, does
22 not apply to any audit or disciplinary action completed or any consent
23 agreement signed before January 1, 2006.