

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2205

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 4-210, Arizona Revised Statutes, is amended to  
3 read:

4 4-210. Grounds for revocation, suspension and refusal to renew:  
5 notice; complaints; hearings

6 A. After notice and hearing, the director may suspend, revoke or  
7 refuse to renew any license issued pursuant to this chapter for any of the  
8 following reasons:

9 1. There occurs on the licensed premises repeated acts of violence or  
10 disorderly conduct.

11 2. The licensee fails to satisfactorily maintain the capability,  
12 qualifications and reliability requirements of an applicant for a license  
13 prescribed in section 4-202 or 4-203.

14 3. The licensee or controlling person knowingly files with the  
15 department an application or other document ~~which~~ THAT contains material  
16 information ~~which~~ THAT is false or misleading or while under oath knowingly  
17 gives testimony in an investigation or other proceeding under this title  
18 ~~which~~ THAT is false or misleading.

19 4. The licensee or controlling person is on the premises habitually  
20 intoxicated.

21 5. The licensed business is delinquent for more than one hundred  
22 twenty days in the payment of taxes, penalties or interest in an amount that  
23 exceeds two hundred fifty dollars to the state or to any political  
24 subdivision of the state.

25 6. The licensee or controlling person obtains, assigns, transfers or  
26 sells a spirituous liquor license without compliance with this title or  
27 leases or subleases a license.

28 7. The licensee fails to keep for two years and make available to the  
29 department on reasonable request all invoices, records, bills or other papers  
30 and documents relating to the purchase, sale and delivery of spirituous

1 liquors and, in the case of a restaurant or hotel-motel licensee, all  
2 invoices, records, bills or other papers and documents relating to the  
3 purchase, sale and delivery of food.

4 8. The licensee or controlling person is convicted of a felony  
5 provided that for a conviction of a corporation to serve as a reason for any  
6 action by the director, conduct ~~which~~ THAT constitutes the corporate offense  
7 and was the basis for the felony conviction must have been engaged in,  
8 authorized, solicited, commanded or recklessly tolerated by the directors of  
9 the corporation or by a high managerial agent acting within the scope of  
10 employment.

11 9. The licensee or controlling person violates or fails to comply with  
12 this title, any rule adopted pursuant to this title or any liquor law of this  
13 state or any other state.

14 10. The licensee fails to take reasonable steps to protect the safety  
15 of a customer of the licensee entering, leaving or remaining on the licensed  
16 premises when the licensee knew or reasonably should have known of the danger  
17 to ~~such~~ THE person, or the licensee fails to take reasonable steps to  
18 intervene by notifying law enforcement officials or otherwise to prevent or  
19 break up an act of violence or an altercation occurring on the licensed  
20 premises or immediately adjacent to the premises when the licensee knew or  
21 reasonably should have known of ~~such~~ THE acts of violence or altercations.

22 11. The licensee or controlling person lacks good moral character.

23 12. The licensee or controlling person knowingly associates with a  
24 person who has engaged in racketeering, as defined in section 13-2301, or who  
25 has been convicted of a felony, and the association is of ~~such~~ a nature as to  
26 create a reasonable risk that the licensee will fail to conform to the  
27 requirements of this title or of any criminal statute of this state.

28 13. THE LICENSEE VIOLATES THE RESTRICTIONS ON USE OF AUTOMATIC TELLER  
29 MACHINES OR POINT-OF-SALE TERMINALS REGARDING ELECTRONIC TRANSFER CARDS  
30 PRESCRIBED IN SECTION 4-242.01.

31

1           B. For the purposes of:

2           1. Subsection A, paragraph 8 of this section, "high managerial agent"  
3 means an officer of a corporation or any other agent of the corporation in a  
4 position of comparable authority with respect to the formulation of corporate  
5 policy.

6           2. Subsection A, paragraphs 9 and 10 of this section, acts or  
7 omissions of an employee of a licensee, which violate any provision of this  
8 title or rules adopted pursuant to this title shall be deemed to be acts or  
9 omissions of the licensee. Acts or omissions by an employee or licensee  
10 committed during the time the licensed premises were operated pursuant to an  
11 interim permit or without a license may be charged as if they had been  
12 committed during the period the premises were duly licensed.

13           C. The director may suspend, revoke or refuse to issue, transfer or  
14 renew a license under this section based solely on the unrelated conduct or  
15 fitness of any officer, director, managing agent or other controlling person  
16 if the controlling person retains any interest in or control of the licensee  
17 after sixty days following written notice to the licensee. If the  
18 controlling person holds stock in a corporate licensee or is a partner in a  
19 partnership licensee, the controlling person may only divest himself of his  
20 interest by transferring the interest to the existing stockholders or  
21 partners who must demonstrate to the department that they meet all the  
22 requirements for licensure. For the purposes of this subsection, the conduct  
23 or fitness of a controlling person is unrelated if it would not be  
24 attributable to the licensee.

25           D. If the director finds, based on clear and convincing evidence in  
26 the record, that a violation involves the use by the licensee of a  
27 drive-through or walk-up service window or other physical feature of the  
28 licensed premises that allows a customer to purchase spirituous liquor  
29 without leaving the customer's vehicle or, with respect to a walk-up service  
30 window that prevents the licensee from fully observing the customer, and that  
31 the use of that drive-through or walk-up service window or other physical  
32 feature caused the violation, the director may suspend or terminate the

1 licensee's use of the drive-through or walk-up service window or other  
2 physical feature for the sale of spirituous liquor, in addition to any other  
3 sanction.

4 E. The director may refuse to transfer any license or issue a new  
5 license at the same location if the director has filed a complaint against  
6 the license or location ~~which~~ THAT has not been resolved alleging a violation  
7 of any of the grounds set forth in subsection A of this section until ~~such~~  
8 THE time ~~as~~ the complaint has been finally adjudicated.

9 F. The director shall receive all complaints of alleged violations of  
10 this chapter and is responsible for the investigation of all allegations of a  
11 violation of, or noncompliance with, this title, any rule adopted pursuant to  
12 this title or any condition imposed on the licensee by the license. When the  
13 director receives three ~~such~~ complaints from any law enforcement agency  
14 resulting from three separate incidents at a licensed establishment within a  
15 twelve-month period, the director shall transmit a written report to the  
16 board setting forth the complaints, the results of any investigation  
17 conducted by the law enforcement agency or the department relating to the  
18 complaints and a history of all prior complaints against the license and  
19 their disposition. The board shall review the report and may direct the  
20 director to conduct further investigation of a complaint or to serve a  
21 licensee with a complaint and notice of a hearing pursuant to subsection G of  
22 this section.

23 G. On the director's initiation of an investigation or on the receipt  
24 of a complaint and an investigation of the complaint as deemed necessary, the  
25 director may cause a complaint and notice of a hearing to be directed to the  
26 licensee setting forth the violations alleged against the licensee and  
27 directing the licensee, within fifteen days after service of the complaint  
28 and notice of a hearing, to appear by filing with the director an answer to  
29 the complaint. Failure of the licensee to answer may be deemed an admission  
30 by the licensee of commission of the act charged in the complaint. The  
31 director may then vacate the hearing and impose any sanction provided by this  
32 article. The director may waive any sanction for good cause shown including

1 excusable neglect. With respect to any violation of this title or any rule  
2 adopted pursuant to this title that is based on the act or omission of a  
3 licensee's employee, the director shall consider evidence of mitigation  
4 presented by the licensee and established by a preponderance of the evidence  
5 that the employee acted intentionally and in violation of the express  
6 direction or policy adopted by the licensee and communicated to the employee  
7 and that the employee successfully completed training in a course approved by  
8 the director pursuant to section 4-112, subsection G, paragraph 2. The  
9 director may set the hearing before himself or an administrative law judge on  
10 any of the grounds set forth in subsection A of this section. Instead of  
11 issuing a complaint, the director may provide for informal disposition of the  
12 matter by consent agreement or may issue a written warning to the licensee.  
13 If a warning is issued, the licensee may reply in writing and the director  
14 shall keep a record of the warning and the reply.

15 H. A hearing shall conform to the requirements of title 41, chapter 6,  
16 article 10. At the hearing an attorney or corporate officer or employee of a  
17 corporation may represent the corporation.

18 I. The expiration, cancellation, revocation, reversion, surrender,  
19 acceptance of surrender or termination in any other manner of a license does  
20 not prevent the initiation or completion of a disciplinary proceeding  
21 pursuant to this section against the licensee or license. An order issued  
22 pursuant to a disciplinary proceeding against a license is enforceable  
23 against other licenses or subsequent licenses in which the licensee or  
24 controlling person of the license has a controlling interest.

25 J. The department shall provide the same notice as is provided to the  
26 licensee to a lienholder, which has provided a document under section 4-112,  
27 subsection B, paragraph 3, of all disciplinary or compliance action with  
28 respect to a license issued pursuant to this title. The state shall not be  
29 liable for damages for any failure to provide any notice pursuant to this  
30 subsection.

31 K. In any disciplinary action pursuant to this title, a lienholder may  
32 participate in the determination of the action. The director shall consider

1 mitigation on behalf of the lienholder if the lienholder proves all of the  
2 following by a preponderance of the evidence:

3 1. That the lienholder's interest is a bona fide security interest.  
4 For the purposes of this paragraph, "bona fide security interest" means the  
5 lienholder provides actual consideration to the licensee or the licensee's  
6 predecessor in interest in exchange for the lienholder's interest. Bona fide  
7 security interest includes a lien taken by the seller of a license as  
8 security for the seller's receipt of all or part of the purchase price of the  
9 license.

10 2. That a statement of legal or equitable interest was filed with the  
11 department before the alleged conduct occurred ~~which~~ THAT is the basis for  
12 the action against the license.

13 3. That the lienholder took reasonable steps to correct the licensee's  
14 prior actions, if any, or initiated an action pursuant to available contract  
15 rights against the licensee for the forfeiture of the license after being  
16 provided with notice by the department of disciplinary action as provided in  
17 subsection J of this section.

18 4. That the lienholder was free of responsibility for the conduct  
19 ~~which~~ THAT is the basis for the proposed revocation.

20 5. That the lienholder reasonably attempted to remain informed by the  
21 licensee about the business' conduct.

22 L. If the director decides not to revoke the license based on the  
23 circumstances provided in subsection K of this section, the director may  
24 issue an order requiring either, or both, of the following:

25 1. The forfeiture of all interest of the licensee in the license.

26 2. The lienholder to pay any civil monetary penalty imposed on the  
27 licensee.

28 M. If any on-sale licensee proposes to provide large capacity  
29 entertainment events or sporting events with an attendance capacity exceeding  
30 a limit established by the director, the director may request a security plan  
31 from the licensee that may include trained security officers, lighting and  
32 other requirements. This subsection exclusively prescribes the security

1 requirements for a licensee and does not create any civil liability for the  
2 state, its agencies, agents or employees or a person licensed under this  
3 title or agents or employees of a licensee.

4 Sec. 2. Title 4, chapter 2, article 3, Arizona Revised Statutes, is  
5 amended by adding section 4-242.01, to read:

6 4-242.01. Prohibition of automatic teller machine or  
7 point-of-sale terminal that accepts electronic  
8 benefit transfer cards on premises

9 IT IS UNLAWFUL FOR A LIQUOR STORE AS DEFINED IN SECTION 46-297 TO  
10 OPERATE ON THE LICENSED PREMISES AN AUTOMATIC TELLER MACHINE OR A  
11 POINT-OF-SALE TERMINAL THAT ACCEPTS ELECTRONIC BENEFIT TRANSFER CARDS ISSUED  
12 PURSUANT TO TITLE 46, CHAPTER 2, ARTICLE 5 OR THAT PROCESSES ELECTRONIC  
13 BENEFIT CARD TRANSACTIONS.

14 Sec. 3. Section 4-246, Arizona Revised Statutes, is amended to read:

15 4-246. Violation; classification

16 A. A person violating any provision of this title is guilty of a class  
17 2 misdemeanor unless another classification is prescribed.

18 B. A person violating section 4-244, paragraph 9, 14, 34, 42 or 44 is  
19 guilty of a class 1 misdemeanor.

20 C. A person violating ~~sections~~ SECTION 4-229, subsection B, or SECTION  
21 4-244, paragraph 31 is guilty of a class 3 misdemeanor.

22 D. In addition to any other penalty prescribed by law, the court may  
23 suspend the privilege to drive of a person under eighteen years of age for a  
24 period of up to one hundred eighty days on receiving the record of the  
25 person's first conviction for a violation of section 4-244, paragraph 9.

26 E. In addition to any other penalty prescribed by law, a person who is  
27 convicted of a violation of section 4-244, paragraph 42 shall pay a fine of  
28 ~~not less than~~ AT LEAST five hundred dollars.

29 F. In addition to any other penalty prescribed by law, a person who is  
30 convicted of a violation of section 4-241, subsection L, M or N shall pay a  
31 fine of ~~not less than~~ AT LEAST two hundred fifty dollars.

32

1           Sec. 4. Title 5, chapter 1, article 1, Arizona Revised Statutes, is  
2 amended by adding section 5-116, to read:

3           5-116. Prohibition of automatic teller machine or point-of-sale  
4                           terminal that accepts electronic benefit transfer  
5                           cards on premises; violation; classification

6           A. IT IS UNLAWFUL FOR A PERMITTEE, LICENSEE OR FACILITY FOR COMMERCIAL  
7 HORSE RACING OR DOG RACING LICENSED PURSUANT TO THIS TITLE TO OPERATE ON THE  
8 LICENSED PREMISES AN AUTOMATIC TELLER MACHINE OR A POINT-OF-SALE TERMINAL  
9 THAT ACCEPTS ELECTRONIC BENEFIT TRANSFER CARDS ISSUED PURSUANT TO TITLE 46,  
10 CHAPTER 2, ARTICLE 5 OR THAT PROCESSES ELECTRONIC BENEFIT TRANSFER CARD  
11 TRANSACTIONS.

12           B. FAILURE TO COMPLY WITH THIS SECTION IS A LICENSE VIOLATION SUBJECT  
13 TO LICENSING ACTION.

14           Sec. 5. Subject to the requirements of article IV, part 1, section 1,  
15 Constitution of Arizona, title 46, chapter 2, article 5, Arizona Revised  
16 Statutes, is amended by adding section 46-297, to read:

17           46-297. Electronic benefit transfers; prohibitions; violation;  
18                           classification; definitions

19           A. A HEAD OF HOUSEHOLD WHO RECEIVES CASH ASSISTANCE PURSUANT TO THIS  
20 SECTION, OR ON BEHALF OF ANOTHER PERSON, AND ANY PERSON AUTHORIZED BY THE  
21 HEAD OF HOUSEHOLD SHALL NOT CONDUCT AN ELECTRONIC BENEFIT TRANSFER  
22 TRANSACTION AT A PROHIBITED BUSINESS.

23           B. A PROHIBITED BUSINESS SHALL NOT ALLOW AN ELECTRONIC BENEFIT  
24 TRANSFER CARD TRANSACTION ON ITS PREMISES. ON OR BEFORE FEBRUARY 1, 2014, A  
25 PROHIBITED BUSINESS SHALL DISABLE THE ABILITY OF EVERY AUTOMATIC TELLER  
26 MACHINE AND POINT-OF-SALE TERMINAL OPERATED ON THE PROHIBITED BUSINESS'  
27 PREMISES TO ACCEPT OR PROCESS AN ELECTRONIC BENEFIT TRANSFER TRANSACTION. A  
28 PROHIBITED BUSINESS THAT VIOLATES THIS SECTION IS SUBJECT TO LICENSING OR  
29 PERMIT ACTION.

30           C. A STATE AGENCY THAT LICENSES OR REGULATES A PROHIBITED BUSINESS  
31 SHALL ENSURE THAT THE PROHIBITED BUSINESS DISABLES THE ABILITY OF AUTOMATIC  
32 TELLER MACHINE AND POINT-OF-SALE TERMINALS OPERATED ON THE PROHIBITED

1 BUSINESS' PREMISES TO ACCEPT THE ELECTRONIC BENEFIT TRANSFER CARD OR PROCESS  
2 AN ELECTRONIC BENEFIT TRANSFER CARD TRANSACTION AND SHALL ENFORCE THE  
3 CONTINUED PROHIBITION ON THE USE OF THE ELECTRONIC BENEFIT TRANSFER CARD.

4 D. AN INDIAN COMMUNITY SHALL ENACT A TRIBAL ORDINANCE ESTABLISHING  
5 RESPONSIBLE RESTRICTIONS ON THE PROVISION OF FINANCIAL SERVICES AT A GAMING  
6 ESTABLISHMENT TO COMPLY WITH THIS SECTION. AT A MINIMUM, THE ORDINANCE SHALL  
7 PROHIBIT:

8 1. LOCATING AN AUTOMATIC TELLER MACHINE ADJACENT TO OR IN CLOSE  
9 PROXIMITY TO ANY GAMING DEVICE AS DEFINED IN SECTION 5-601.02.

10 2. LOCATING AN AUTOMATIC TELLER MACHINE OR POINT-OF-SALE TERMINAL THAT  
11 ACCEPTS OR PROCESSES AN ELECTRONIC BENEFIT TRANSFER CARD TRANSACTION IN A  
12 GAMING FACILITY.

13 E. A MUNICIPALITY THAT LICENSES OR REGULATES ADULT ORIENTED  
14 ENTERTAINMENT BUSINESSES SHALL ENSURE THAT ALL ADULT ORIENTED BUSINESSES IN  
15 THE MUNICIPALITY'S JURISDICTION DISABLE THE ABILITY OF AUTOMATIC TELLER  
16 MACHINE AND POINT-OF-SALE TERMINALS OPERATED ON THE BUSINESS' PREMISES TO  
17 ACCEPT THE ELECTRONIC BENEFIT TRANSFER CARD OR PROCESS AN ELECTRONIC BENEFIT  
18 TRANSFER CARD TRANSACTION AND SHALL ENFORCE THE CONTINUED PROHIBITION ON THE  
19 USE OF THE ELECTRONIC BENEFIT TRANSFER CARD. A MUNICIPALITY SHALL ENACT  
20 ORDINANCES NECESSARY TO ENSURE COMPLIANCE WITH THIS SECTION.

21 F. THE DEPARTMENT SHALL NOTIFY ELECTRONIC BENEFIT TRANSFER CARD  
22 RECIPIENTS OF THE RESTRICTIONS PRESCRIBED IN SUBSECTION A OF THIS SECTION.

23 G. AN ADULT ORIENTED ENTERTAINMENT ESTABLISHMENT THAT VIOLATES THIS  
24 SECTION IS SUBJECT TO LICENSING OR PERMIT ACTION.

25 H. FOR THE PURPOSES OF THIS SECTION:

26 1. "ADULT ORIENTED ESTABLISHMENT" MEANS AN ENTERTAINMENT BUSINESS AT  
27 WHICH PERFORMERS DISROBE OR PERFORM IN AN UNCLOTHED STATE.

28 2. "CASINO", "GAMBLING CASINO" AND "GAMING ESTABLISHMENT" DO NOT  
29 INCLUDE EITHER OF THE FOLLOWING:

30 (a) A GROCERY STORE THAT SELLS GROCERIES, INCLUDING STAPLE FOODS, AND  
31 THAT IS LOCATED IN THE SAME BUILDING OR COMPLEX AS CASINO, GAMBLING OR GAMING  
32 ACTIVITIES.

1 (b) ANY OTHER BUSINESS THAT OFFERS CASINO, GAMBLING OR GAMING  
2 ACTIVITIES INCIDENTAL TO THE PRINCIPAL PURPOSE BUSINESS.

3 3. "ELECTRONIC BENEFIT TRANSFER CARD TRANSACTION" MEANS THE USE OF A  
4 CREDIT OR DEBIT CARD SERVICE, AUTOMATED TELLER MACHINE, POINT-OF-SALE  
5 TERMINAL OR ACCESS TO AN ONLINE SYSTEM FOR THE WITHDRAWAL OF CASH ASSISTANCE  
6 PROVIDED PURSUANT TO THIS ARTICLE OR FOR THE PROCESSING OF A PAYMENT FOR  
7 MERCHANDISE OR A SERVICE FROM CASH ASSISTANCE PROVIDED PURSUANT TO THIS  
8 ARTICLE.

9 4. "LIQUOR" MEANS THE FOLLOWING SUBSTANCES AS DEFINED IN SECTION  
10 4-101:

11 (a) BEER

12 (b) WINE

13 (c) DISTILLED SPIRITS

14 (d) SPIRITUOUS LIQUOR

15 5. "LIQUOR STORE" MEANS:

16 (a) A RETAIL ESTABLISHMENT THAT EXCLUSIVELY OR PRIMARILY SELLS LIQUOR,  
17 BUT DOES NOT INCLUDE A GROCERY STORE THAT SELLS BOTH LIQUOR AND GROCERIES,  
18 INCLUDING STAPLE FOODS.

19 (b) ANY PERSON OPERATING AN ESTABLISHMENT WHERE LIQUOR IS SOLD IN THE  
20 ORIGINAL CONTAINER FOR CONSUMPTION OFF PREMISES.

21 6. "PROHIBITED BUSINESS" MEANS ANY OF THE FOLLOWING, AND INCLUDES THE  
22 LICENSEE OR PERMITEE OF THE PROHIBITED BUSINESS:

23 (a) A LIQUOR STORE.

24 (b) A CASINO, GAMBLING CASINO OR GAMING ESTABLISHMENT, INCLUDING A  
25 FACILITY FOR COMMERCIAL HORSE RACING OR DOG RACING AS DEFINED IN SECTION  
26 5-101.

27 (c) AN ADULT ORIENTED ESTABLISHMENT.

28 7. "STAPLE FOOD" MEANS FOOD IN ANY OF THE FOLLOWING CATEGORIES EXCEPT  
29 ACCESSORY FOOD ITEMS SUCH AS COFFEE, TEA, COCOA, CARBONATED AND UNCARBONATED  
30 DRINKS, CANDY, CONDIMENTS AND SPICES:

31 (a) MEAT, POULTRY OR FISH.

32 (b) BREAD OR CEREALS.

1 (c) VEGETABLES OR FRUITS.

2 (d) DAIRY PRODUCTS.

3 Sec. 6. Requirements for enactment; three-fourths vote

4 Pursuant to article IV, part 1, section 1, Constitution of Arizona,  
5 section 46-297, Arizona Revised Statutes, as added by this act, is effective  
6 only on the affirmative vote of at least three-fourths of the members of each  
7 house of the legislature."

8 Amend title to conform

STEVE B. MONTENEGRO

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