

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HOUSE BILL 2205

AN ACT

AMENDING SECTION 4-210, ARIZONA REVISED STATUTES; AMENDING TITLE 4, CHAPTER 2, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 4-242.01; AMENDING SECTION 4-246, ARIZONA REVISED STATUTES; AMENDING TITLE 5, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 5-116; AMENDING TITLE 46, CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 46-297; RELATING TO TEMPORARY ASSISTANCE FOR NEEDY FAMILIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
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
31 liquors and, in the case of a restaurant or hotel-motel licensee, all
32 invoices, records, bills or other papers and documents relating to the
33 purchase, sale and delivery of food.
34 8. The licensee or controlling person is convicted of a felony
35 provided that for a conviction of a corporation to serve as a reason for any
36 action by the director, conduct ~~which~~ THAT constitutes the corporate offense
37 and was the basis for the felony conviction must have been engaged in,
38 authorized, solicited, commanded or recklessly tolerated by the directors of
39 the corporation or by a high managerial agent acting within the scope of
40 employment.
41 9. The licensee or controlling person violates or fails to comply with
42 this title, any rule adopted pursuant to this title or any liquor law of this
43 state or any other state.

1 10. The licensee fails to take reasonable steps to protect the safety
2 of a customer of the licensee entering, leaving or remaining on the licensed
3 premises when the licensee knew or reasonably should have known of the danger
4 to ~~such~~ THE person, or the licensee fails to take reasonable steps to
5 intervene by notifying law enforcement officials or otherwise to prevent or
6 break up an act of violence or an altercation occurring on the licensed
7 premises or immediately adjacent to the premises when the licensee knew or
8 reasonably should have known of ~~such~~ THE acts of violence or altercations.

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

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

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

18 B. For the purposes of:

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

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

30 C. The director may suspend, revoke or refuse to issue, transfer or
31 renew a license under this section based solely on the unrelated conduct or
32 fitness of any officer, director, managing agent or other controlling person
33 if the controlling person retains any interest in or control of the licensee
34 after sixty days following written notice to the licensee. If the
35 controlling person holds stock in a corporate licensee or is a partner in a
36 partnership licensee, the controlling person may only divest himself of his
37 interest by transferring the interest to the existing stockholders or
38 partners who must demonstrate to the department that they meet all the
39 requirements for licensure. For the purposes of this subsection, the conduct
40 or fitness of a controlling person is unrelated if it would not be
41 attributable to the licensee.

42 D. If the director finds, based on clear and convincing evidence in
43 the record, that a violation involves the use by the licensee of a
44 drive-through or walk-up service window or other physical feature of the
45 licensed premises that allows a customer to purchase spirituous liquor

1 without leaving the customer's vehicle or, with respect to a walk-up service
2 window that prevents the licensee from fully observing the customer, and that
3 the use of that drive-through or walk-up service window or other physical
4 feature caused the violation, the director may suspend or terminate the
5 licensee's use of the drive-through or walk-up service window or other
6 physical feature for the sale of spirituous liquor, in addition to any other
7 sanction.

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

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

27 G. On the director's initiation of an investigation or on the receipt
28 of a complaint and an investigation of the complaint as deemed necessary, the
29 director may cause a complaint and notice of a hearing to be directed to the
30 licensee setting forth the violations alleged against the licensee and
31 directing the licensee, within fifteen days after service of the complaint
32 and notice of a hearing, to appear by filing with the director an answer to
33 the complaint. Failure of the licensee to answer may be deemed an admission
34 by the licensee of commission of the act charged in the complaint. The
35 director may then vacate the hearing and impose any sanction provided by this
36 article. The director may waive any sanction for good cause shown including
37 excusable neglect. With respect to any violation of this title or any rule
38 adopted pursuant to this title that is based on the act or omission of a
39 licensee's employee, the director shall consider evidence of mitigation
40 presented by the licensee and established by a preponderance of the evidence
41 that the employee acted intentionally and in violation of the express
42 direction or policy adopted by the licensee and communicated to the employee
43 and that the employee successfully completed training in a course approved by
44 the director pursuant to section 4-112, subsection G, paragraph 2. The
45 director may set the hearing before himself or an administrative law judge on

1 any of the grounds set forth in subsection A of this section. Instead of
2 issuing a complaint, the director may provide for informal disposition of the
3 matter by consent agreement or may issue a written warning to the licensee.
4 If a warning is issued, the licensee may reply in writing and the director
5 shall keep a record of the warning and the reply.

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

9 I. The expiration, cancellation, revocation, reversion, surrender,
10 acceptance of surrender or termination in any other manner of a license does
11 not prevent the initiation or completion of a disciplinary proceeding
12 pursuant to this section against the licensee or license. An order issued
13 pursuant to a disciplinary proceeding against a license is enforceable
14 against other licenses or subsequent licenses in which the licensee or
15 controlling person of the license has a controlling interest.

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

22 K. In any disciplinary action pursuant to this title, a lienholder may
23 participate in the determination of the action. The director shall consider
24 mitigation on behalf of the lienholder if the lienholder proves all of the
25 following by a preponderance of the evidence:

26 1. That the lienholder's interest is a bona fide security interest.
27 For the purposes of this paragraph, "bona fide security interest" means the
28 lienholder provides actual consideration to the licensee or the licensee's
29 predecessor in interest in exchange for the lienholder's interest. Bona fide
30 security interest includes a lien taken by the seller of a license as
31 security for the seller's receipt of all or part of the purchase price of the
32 license.

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

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

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

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

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

- 4 1. The forfeiture of all interest of the licensee in the license.
5 2. The lienholder to pay any civil monetary penalty imposed on the
6 licensee.

7 M. If any on-sale licensee proposes to provide large capacity
8 entertainment events or sporting events with an attendance capacity exceeding
9 a limit established by the director, the director may request a security plan
10 from the licensee that may include trained security officers, lighting and
11 other requirements. This subsection exclusively prescribes the security
12 requirements for a licensee and does not create any civil liability for the
13 state, its agencies, agents or employees or a person licensed under this
14 title or agents or employees of a licensee.

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

17 4-242.01. Prohibition of automatic teller machine or
18 point-of-sale terminal that accepts electronic
19 benefit transfer cards on premises

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

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

26 4-246. Violation: classification

27 A. A person violating any provision of this title is guilty of a class
28 2 misdemeanor unless another classification is prescribed.

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

31 C. A person violating ~~sections~~ SECTION 4-229, subsection B, or SECTION
32 4-244, paragraph 31 is guilty of a class 3 misdemeanor.

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

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

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

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. Title 46, chapter 2, article 5, Arizona Revised Statutes, is
15 amended by adding section 46-297, to read:

16 46-297. Electronic benefit transfers; prohibitions; violation;
17 classification; definitions

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

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

29 C. A STATE AGENCY THAT LICENSES OR REGULATES A PROHIBITED BUSINESS
30 SHALL ENSURE THAT THE PROHIBITED BUSINESS DISABLES THE ABILITY OF AUTOMATIC
31 TELLER MACHINE AND POINT-OF-SALE TERMINALS OPERATED ON THE PROHIBITED
32 BUSINESS' PREMISES TO ACCEPT THE ELECTRONIC BENEFIT TRANSFER CARD OR PROCESS
33 AN ELECTRONIC BENEFIT TRANSFER CARD TRANSACTION AND SHALL ENFORCE THE
34 CONTINUED PROHIBITION ON THE USE OF THE ELECTRONIC BENEFIT TRANSFER CARD.

35 D. ACCESS TO AUTOMATIC TELLER MACHINES AT A GAMING FACILITY LOCATED ON
36 INDIAN LANDS IS GOVERNED BY THE TRIBAL-STATE GAMING COMPACT DESCRIBED IN
37 SECTION 5-601.02 AND REGULATED BY THE ARIZONA DEPARTMENT OF GAMING AND THE
38 TRIBE UNDER THE SAME PROVISIONS.

39 E. A MUNICIPALITY THAT LICENSES OR REGULATES ADULT ORIENTED
40 ENTERTAINMENT BUSINESSES SHALL ENSURE THAT ALL ADULT ORIENTED BUSINESSES IN
41 THE MUNICIPALITY'S JURISDICTION DISABLE THE ABILITY OF AUTOMATIC TELLER
42 MACHINE AND POINT-OF-SALE TERMINALS OPERATED ON THE BUSINESS' PREMISES TO
43 ACCEPT THE ELECTRONIC BENEFIT TRANSFER CARD OR PROCESS AN ELECTRONIC BENEFIT
44 TRANSFER CARD TRANSACTION AND SHALL ENFORCE THE CONTINUED PROHIBITION ON THE

1 USE OF THE ELECTRONIC BENEFIT TRANSFER CARD. A MUNICIPALITY SHALL ENACT
2 ORDINANCES NECESSARY TO ENSURE COMPLIANCE WITH THIS SECTION.

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

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

7 H. FOR THE PURPOSES OF THIS SECTION:

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

10 2. "CASINO", "GAMBLING CASINO" AND "GAMING ESTABLISHMENT" DO NOT
11 INCLUDE ANY OF THE FOLLOWING:

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

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

17 (c) A GAMING FACILITY LOCATED ON INDIAN LANDS GOVERNED BY THE
18 TRIBAL-STATE GAMING COMPACT DESCRIBED IN SECTION 5-601.02.

19 3. "ELECTRONIC BENEFIT TRANSFER CARD TRANSACTION" MEANS THE USE OF A
20 CREDIT OR DEBIT CARD SERVICE, AUTOMATED TELLER MACHINE, POINT-OF-SALE
21 TERMINAL OR ACCESS TO AN ONLINE SYSTEM FOR THE WITHDRAWAL OF CASH ASSISTANCE
22 PROVIDED PURSUANT TO THIS ARTICLE OR FOR THE PROCESSING OF A PAYMENT FOR
23 MERCHANDISE OR A SERVICE FROM CASH ASSISTANCE PROVIDED PURSUANT TO THIS
24 ARTICLE.

25 4. "LIQUOR" MEANS THE FOLLOWING SUBSTANCES AS DEFINED IN SECTION
26 4-101:

27 (a) BEER.

28 (b) WINE.

29 (c) DISTILLED SPIRITS.

30 (d) SPIRITUOUS LIQUOR.

31 5. "LIQUOR STORE" MEANS:

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

35 (b) AN ON-SALE RETAILER AS DEFINED IN SECTION 4-101 IF THE ON-SALE
36 RETAILER SELLS LIQUOR IN THE ORIGINAL CONTAINER FOR CONSUMPTION OFF PREMISES.

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

39 (a) A LIQUOR STORE.

40 (b) A CASINO, GAMBLING CASINO OR GAMING ESTABLISHMENT, INCLUDING A
41 FACILITY FOR COMMERCIAL HORSE RACING OR DOG RACING AS DEFINED IN SECTION
42 5-101.

43 (c) AN ADULT ORIENTED ESTABLISHMENT.

- 1 7. "STAPLE FOOD" MEANS FOOD IN ANY OF THE FOLLOWING CATEGORIES EXCEPT
2 ACCESSORY FOOD ITEMS SUCH AS COFFEE, TEA, COCOA, CARBONATED AND UNCARBONATED
3 DRINKS, CANDY, CONDIMENTS AND SPICES:
4 (a) MEAT, POULTRY OR FISH.
5 (b) BREAD OR CEREALS.
6 (c) VEGETABLES OR FRUITS.
7 (d) DAIRY PRODUCTS.