

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. A LICENSEE THAT IS A LIQUOR STORE AS DEFINED IN SECTION 46-297
16 VIOLATES THE RESTRICTIONS ON USE OF AUTOMATIC TELLER MACHINES OR
17 POINT-OF-SALE TERMINALS REGARDING ELECTRONIC BENEFIT TRANSFER CARDS
18 PRESCRIBED IN SECTION 4-242.01.

19 B. For the purposes of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 5. That the lienholder reasonably attempted to remain informed by the
45 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 A. 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 B. ON OR BEFORE FEBRUARY 1, 2014, A LICENSEE THAT IS A LIQUOR STORE AS
26 DEFINED IN SECTION 46-297 SHALL DISABLE THE ABILITY OF EVERY AUTOMATIC TELLER
27 MACHINE AND POINT OF SALE TERMINAL OPERATED ON THE PREMISES TO ACCEPT OR
28 PROCESS AN ELECTRONIC BENEFIT TRANSFER TRANSACTION.

29 C. THE BOARD SHALL ENSURE COMPLIANCE WITH THE REQUIREMENTS OF THIS
30 SECTION AND ENFORCE THE CONTINUED PROHIBITION ON THE USE OF ELECTRONIC
31 BENEFIT TRANSFER CARDS.

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

33 4-246. Violation; classification

34 A. A person violating any provision of this title is guilty of a class
35 2 misdemeanor unless another classification is prescribed.

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

38 C. A person violating ~~sections~~ SECTION 4-229, subsection B, or SECTION
39 4-244, paragraph 31 is guilty of a class 3 misdemeanor.

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

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

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

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

9 5-116. Prohibition of automatic teller machine or point-of-sale
10 terminal that accepts electronic benefit transfer
11 cards on premises; violation; classification

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

18 B. ON OR BEFORE FEBRUARY 1, 2014, A PERMITTEE, LICENSEE OR FACILITY
19 FOR COMMERCIAL HORSE RACING OR DOG RACING LICENSED PURSUANT TO THIS TITLE
20 SHALL DISABLE THE ABILITY OF EVERY AUTOMATIC TELLER MACHINE AND POINT OF SALE
21 TERMINAL OPERATED ON THE PREMISES TO ACCEPT OR PROCESS AN ELECTRONIC BENEFIT
22 TRANSFER TRANSACTION.

23 C. FAILURE TO COMPLY WITH THIS SECTION IS A LICENSE VIOLATION SUBJECT
24 TO LICENSING ACTION. THE COMMISSION SHALL ENSURE COMPLIANCE WITH THE
25 REQUIREMENTS OF THIS SECTION AND ENFORCE THE CONTINUED PROHIBITION ON THE USE
26 OF ELECTRONIC BENEFIT TRANSFER CARDS.

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

29 46-297. Electronic benefit transfers; prohibitions; violation;
30 classification; definitions

31 A. A HEAD OF HOUSEHOLD WHO RECEIVES CASH ASSISTANCE PURSUANT TO THIS
32 SECTION, OR ON BEHALF OF ANOTHER PERSON, AND ANY PERSON AUTHORIZED BY THE
33 HEAD OF HOUSEHOLD SHALL NOT CONDUCT AN ELECTRONIC BENEFIT TRANSFER
34 TRANSACTION AT ANY OF THE FOLLOWING:

35 1. A LIQUOR STORE AS DEFINED IN THIS SECTION.

36 2. A COMMERCIAL HORSE RACING OR DOG RACING FACILITY AS DEFINED IN
37 SECTION 5-101.

38 3. A CASINO, GAMBLING CASINO, GAMING ESTABLISHMENT OR A GAMING
39 FACILITY LOCATED ON INDIAN LANDS PURSUANT TO SECTION 5-601.02.

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

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

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

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

8 E. FOR THE PURPOSES OF THIS SECTION:

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

11 2. "ELECTRONIC BENEFIT TRANSFER CARD TRANSACTION" MEANS THE USE OF A
12 CREDIT OR DEBIT CARD SERVICE, AUTOMATED TELLER MACHINE, POINT-OF-SALE
13 TERMINAL OR ACCESS TO AN ONLINE SYSTEM FOR THE WITHDRAWAL OF CASH ASSISTANCE
14 PROVIDED PURSUANT TO THIS ARTICLE OR FOR THE PROCESSING OF A PAYMENT FOR
15 MERCHANDISE OR A SERVICE FROM CASH ASSISTANCE PROVIDED PURSUANT TO THIS
16 ARTICLE.

17 3. "LIQUOR" MEANS THE FOLLOWING SUBSTANCES AS DEFINED IN SECTION
18 4-101:

19 (a) BEER.

20 (b) WINE.

21 (c) DISTILLED SPIRITS.

22 (d) SPIRITUOUS LIQUOR.

23 4. "LIQUOR STORE" MEANS:

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

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

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

32 (a) MEAT, POULTRY OR FISH.

33 (b) BREAD OR CEREALS.

34 (c) VEGETABLES OR FRUITS.

35 (d) DAIRY PRODUCTS.