



HOUSE OF REPRESENTATIVES

SB 1397

liquor omnibus

Sponsor: Senator McComish

DPA Committee on Commerce

DPA Caucus and COW

X House Engrossed

OVERVIEW

SB 1397 makes numerous changes to the statutes that regulate the Department of Liquor Licenses and Control.

HISTORY

The United States Alcohol and Tobacco Tax and Trade Bureau (TTB) is a bureau under the U.S. Department of the Treasury established in 2003 under the Homeland Security Act. The mission of the TTB is to protect the public and collect federal excise taxes on alcohol, tobacco, firearms and ammunition and to ensure compliance with the federal tobacco and alcohol permits, labels and marketing requirements.

The Arizona Department of Liquor Licenses and Control (Department) was created to protect the public health, safety and welfare, and support economic growth by licensing, investigating and regulating the production, distribution and sale of alcoholic beverages. The Department consists of a governor appointed director and seven members of the Liquor Board. The Department issues various licenses and temporary licenses, all of which have a corresponding series number. Currently, the only transferrable licenses are the Series 06 (Bar License), Series 07 (Beer and Wine Bar License) and Series 09 (Liquor Store License). Throughout FY 2013, the Department had a total of 42 FTEs. There are a total 11,930 active licenses, with 10,334 related to in-state licenses. The Department issues more than 250 new and 600 renewal licenses every month. [FY2013 Annual Report]

Current law allows a person to be licensed as a domestic farm winery to sell wine produced or manufactured if it produces at least 200 gallons, but not more than 40,000 gallons of wine in a calendar year (A.R.S. § 4-205.04). Providing samples to retail consumers at on-sale premises by producers or wholesalers is currently limited to 12 ounces of beer or cooler products, six ounces of wine or two ounces of distilled spirits per person per brand. Samples to retail consumers on off-sale premises is limited to three ounces of beer, one and one-half ounces of wine or one ounce of distilled spirits per person per day (A.R.S. § 4-243).

PROVISIONS

Wine Festival License

[§ 4-203.03]

- Doubles the number of wine festival licenses and the total number of days per winery from 25 licenses for 75 calendar days to 50 licenses for 150 calendar days.
- Clarifies the cost for the license is \$15 *per day* for each event.

Farm Winery License
[§4-205.04]

- Incorporates specific eligibility requirements for licensure as a farm winery, which includes a department-issued license and TTB winery permit or a contract to produce/manufacture wine from grapes or other fruit on at least five acres of land owned or controlled by the applicant, with fruit growing at least three consecutive calendar years.
- Clarifies the farm winery must deliver the wine or ship the wine by common carrier to the residential or business address.
- Changes the reporting requirement for wine produced or manufactured during the year from *fiscal year* to *calendar year*.
- Limits a licensed farm winery's sale of wine produced or manufactured by another farm winery to 20% of the total sales.
- Permits the director to approve alternating proprietorships that group two or more farm winery licenses at one location, if licensees have a TTB permit and operate under the associated federal guidelines and regulations. Additionally, requires each winery to file all necessary reports regarding wine production and manufacturing.
- Allows a person eligible to receive a winery license to enter into a *custom crush* arrangement where a licensed winery produces or manufactures wine from grapes or other fruit. Requires the winery receiving the fruit to be TTB federally and state licensed and to file all necessary reports regarding wine production and manufacturing.
- Directs the *custom crush* supplier to first be licensed and to report all volumes of wine from its *custom crush* arrangements to the department. Prohibits the gallons from being allocated to the receiving winery.
- Authorizes the Department to permit a licensed farm winery to operate a maximum two other tasting and retail premises if the following conditions are met:
 - The wine sold at the remote location is limited to wine produced or manufactured by the licensee or other licensed farm wineries (the latter is limited to 20% of total sales).
 - The licensee remains responsible for the tasting room and gets approval from the appropriate local governing body and submits a copy of that approval as part of the application to the department.
 - The licensee does not sublease the tasting room location and has an agent who meets the required qualifications for licensure in Arizona.
- Authorizes the Department to issue a producer's license upon application and surrender of the farm winery's license, if the total amount of wine produced or manufactured during the year exceeds the amount permissible by statute.
- Permits a *Farm Winery* licensee to hold a *Craft Distillery* license on a separate premises. The Farm Wine and Craft Distillery may produce spirituous liquor up to 1,000 gallons per calendar year from fruit processed at the winery for the primary purpose of wine-making.
- Grandfathers existing domestic farm wineries and permits them to continue their operations without expanding, until January 1, 2019. Further, stipulates that current domestic farm winery licensees that hold beer/wine bar and/or beer/wine store licenses may continue to operate, but only for licenses issued before January 1, 2014. [Session Law–Section 31]

Craft Distiller License
[§ 4-205.10]

- Effective July 1, 2018, establishes a *craft distiller* license that cannot be transferred and limits production of distilled spirits to 20,000 gallons per calendar year.
- Defines the *annual gallonage* as the total finished product available for sale at wholesale or retail.
- Subjects the licensed craft distiller to the following limitations:
 - Make sales/deliveries of product to licensed wholesalers.
 - Serve product on the premises and charge for samples.
 - Sell product for consumption off-premises to a customer physically present.
 - Hold a restaurant license on the premises. The craft distiller must buy all other spirituous liquor for sale at the retail premises from licensed wholesalers, except that the craft distiller: a) may buy spirituous liquor from other state-licensed craft distillers; and subject to the limitations, may deliver to other licensed distillers.
 - Make sales/deliveries of product to on-sale and off-sale retailers, if the licensee does not produce more than 1,189 gallons of distilled spirits per calendar year.
 - Make sales/deliveries of product to consumers, if the orders are placed by telephone, mail, fax, catalogue, the Internet or other means as outlined.
- Requires annual reporting regarding the amount of distilled spirits it produces and manufactures each *calendar year*.
- Places liability on the craft distiller for any violation related to a sale or delivery of the distilled spirits and applies all Department rules and statutes to those transactions.
- Gives the Department the authority to adopt administrative rules to implement the provisions of this new license and the related privileges.
- Authorizes the Department to issue a producer's license upon application and surrender of the craft distiller license, if the total amount of distilled spirits produced or manufactured during the year exceeds the amount permissible by statute.
- Creates a Craft Distillery festival license, caps the total amount at 25 per calendar year for each distillery, for up to 75 calendar days and outlines specific requirements, including fee.
- Stipulates the craft distiller must pay all applicable taxes as required by law. [§ 42-3355]

Special Event License
[§ 4-203.02]

- For a special event license, exempts from the approval process by the governing body of the city/county: a) any already licensed establishment; b) the physical locations that are not licensed, but are owned, operated or otherwise managed by the federal or state government or any Arizona city, town or county.
- Limits special event licenses to 12 per calendar year for physical locations that are government-owned, and are not licensed. Requires all applications be submitted to the Department at least 10 days before the special event.

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- Authorizes the director to simultaneously issue a special event license with a wine festival license. Permits the location of the wine festival license within an excluded area of the special event license and both licenses must permit the presence of spirituous liquor.
- Clarifies the qualified organization with a special event license receives at least 25% of the gross revenues of all spirituous liquor sold at the event.

Miscellaneous License

- Stipulates the director's finding of good cause as a reason to extend the time to approve or deny a license. [§ 4-201.01]
- Deems a transferrable license and a replacement of a hotel/motel license for a restaurant license to be presumed to be in the public interest, as when first issued. [§ 4-203]
- Permits the director to issue an interim permit for the replacement of a hotel/motel license with a restaurant license. [§ 4-203.01]
- Authorizes the Department to issue a government license to a state agency, board or commission, in addition to current law, which includes a county, city, town, community college, university, National Guard or the Arizona Exposition/State Fair Board. [§ 4-205.03]
- Instructs a licensee to surrender its microbrewery license and obtain a producer's license when it exceeds the permissible amount of beer that may be produced or manufactured annually. [§ 4-205.08]
- Clarifies that a microbrewery may sell and deliver a cumulative maximum total gallons of beer per calendar year to other licensed retailers. [§ 4-205.08]
- Asserts the director's ability to waive issuance or re-issue of any quota license that has been revoked or reverted back to the county after July 1, 2014. [§ 4-206.01]

Grounds for License Suspension or Revocation and Injunctive Relief

- Adds to the reasons for license suspension or revocation:
 - *A serious act of violence* occurs on the licensed premises. Defines *serious act of violence* to mean a riot, brawl or disturbance resulting in serious injury that causes death or critical injury of the person and the injuries are obvious to a reasonable person.
 - A licensee fails to report a *serious act of violence* that occurs on the premises. [§ 4-210]
- Authorizes the liquor board or director to apply to the superior court for a temporary restraining order or injunctive relief if an out of state person is violating statutes, or manufacturing, selling or dealing spirituous liquor without the proper credentials. [§ 4-212]

Fees and Penalties

- Provides authorization for the director to charge an additional farm winery license fee for issuing licenses or authorizations for the alternating proprietorship, custom crush and tasting/retail remote site. [§ 4-205.04 and § 4-209]
- Authorizes the department to charge a fee for a craft distiller license. [§ 4-205.10]

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- Designates license fees based on number of gallons of product manufactured or produced rather than cases of product. [§ 4-209]
- States the current civil penalty is *per violation* if an out-of-state person engaged in business in Arizona knowingly violates a cease and desist order issued by the director. [§ 4-250.01]

Sampling

[§4-243]

- Clarifies the name of the wholesaler or producer distributing the product must be included in the written notification to the Department.
- States that the current sampling limitations are for on-premises consumption.
- Establishes off-premises consumption limits as follows: 72 oz. beer; 2 oz. distilled spirits per person per day.
- Clarifies that off-sale retailer sampling each calendar year are the limitations per wholesaler or producer.

Miscellaneous

- Directs common carriers that ship spirituous liquor in-state, except railroads, to keep records with specific information and provide them to the Department upon request. [§ 4-203.04]
- Includes recycling as a method for disposing of seized spirituous liquor. [§ 4-205.05]
- Requires two appraisals by independent appraisers (rather than three appraisals) to determine the fair market value of a quota license. [§ 4-206.01]
- Exempts from the Department's restrictions on licensing near a school or church, any nonprofit arts theatre with a permanent seating capacity of at least 250 persons and clarifies the replacement and transferrable license. [§ 4-207]
- Removes the requirement for a playing area of a golf course to be fenced in order to be exempt from the 300 foot rule. [§ 4-207]
- Exempts from the liquor statutes, beer produced for personal or family use that is not for sale and further permits its exhibit at organized affairs or competitions such as home brewers' contests or tastings. [§ 4-226]
- Channel Pricing – Creates a new section of statute that outlines requirements when a wholesaler sells product to on-sale licensees at a different price than off-sale licensees. The sale prices must be based on volume of product delivered within a 24-hour period and made equally available to all retailers within the channel. [§ 4-227]
- Modifies the make-up of a *qualified retail cooperative* as two retail licensees and specifies the manner in which they buy product from the wholesaler. [§ 4-227]
- Strikes language that refers to a person having a permit in order to carry a concealed handgun on a licensed premise. [§ 4-229]
- Modifies and restricts the acceptable written forms of identification (ID) to be unexpired and include a photo and birth date. Stipulates that 30 days after a person turns 21 years old, the underage and nonoperator's driver license becomes an unacceptable form of ID. [§ 4-241]

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- Clarifies that a wholesaler or producer may engage in credit transactions with another wholesaler and producer, respectively. [§ 4-242]
- Permits beer to be dispensed in a refillable container composed of a material approved by a national sanitation organization, rather than only a glass container. [§ 4-244]
- Makes it unlawful for a licensee to allow patrons to use any item to consume vaporized spirituous liquor. [§ 4-244]
- Changes the name of the *domestic farm winery* and the *domestic microbrewery* by removing the term *domestic* from the definition. [§ 4-101]
- Deletes the date that currently limits the Department to charging fees until January 1, 2015, for the following purposes: fingerprinting services; site inspections that are conducted before the Department issues a restaurant license; sampling privileges; review of review of floor plans and diagrams; inspections of unlicensed premises.
- Clarifies the spirituous liquor delivery must be made at the retail agent's licensed premises or other Department-authorized location. [§ 4-222]
- Contains a severability clause. [Session Law – Section 39]