

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

CHAPTER 65
SENATE BILL 1347

AN ACT

AMENDING SECTIONS 42-3001, 42-3401 AND 42-3403, ARIZONA REVISED STATUTES;
RELATING TO LUXURY PRIVILEGE TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-3001, Arizona Revised Statutes, is amended to
3 read:

4 42-3001. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Affix" and "affixed" include imprinting tax meter stamps on
7 packages and individual containers as authorized by the department.

8 2. "Brand family" has the same meaning prescribed in section
9 44-7111.

10 3. "CAVENDISH" MEANS A TOBACCO PRODUCT THAT IS SMOKED FROM A PIPE
11 AND THAT MEETS ONE OF THE FOLLOWING CRITERIA:

12 (a) IS DESCRIBED AS CAVENDISH, AS CONTAINING CAVENDISH OR AS A
13 CAVENDISH BLEND ON ITS PACKAGING, LABELING OR PROMOTIONAL MATERIALS.

14 (b) APPEARS TO HAVE BEEN PROCESSED OR MANUFACTURED WITH AN AMOUNT
15 OF FLAVORINGS AND HUMECTANTS THAT EXCEEDS TWENTY PERCENT OF THE WEIGHT OF
16 THE TOBACCO CONTAINED IN THE PRODUCT.

17 (c) APPEARS TO BE BLENDED WITH OR CONTAIN A TOBACCO PRODUCT
18 DESCRIBED IN SUBDIVISION (b) OF THIS PARAGRAPH.

19 ~~3.~~ 4. "Cider" means vinous liquor that is made from the normal
20 alcoholic fermentation of the juice of sound, ripe apples, pears or other
21 pome fruit, including flavored, sparkling and carbonated cider and cider
22 made from condensed apple, pear or other pome fruit must, and that
23 contains more than one-half of one percent of alcohol by volume but not
24 more than seven percent of alcohol by volume.

25 ~~4.~~ 5. "Cigar" means any roll of tobacco wrapped in leaf tobacco or
26 in any substance containing tobacco other than any roll of tobacco that is
27 a cigarette, as defined in paragraph ~~5~~ 6, subdivision (b) of this
28 section.

29 ~~5.~~ 6. "Cigarette" means either of the following:

30 (a) Any roll of tobacco wrapped in paper or any substance not
31 containing tobacco.

32 (b) Any roll of tobacco wrapped in any substance containing tobacco
33 that, because of its appearance, the type of tobacco used in the filler or
34 its packaging and labeling, is likely to be offered to or purchased by a
35 consumer as a cigarette described in subdivision (a) of this paragraph.
36 This subdivision shall be interpreted consistently with the classification
37 guidelines established by the federal alcohol and tobacco tax and trade
38 bureau.

39 ~~6.~~ 7. "Consumer" means a person in this state that comes into
40 possession of any luxury subject to the tax imposed by this chapter and
41 that, on coming into possession of the luxury, is not a distributor
42 intending to sell or distribute the luxury, retailer or wholesaler.

43 ~~7.~~ 8. "Craft distiller" means a distiller in the United States or
44 in a territory or possession of the United States that holds a license
45 pursuant to section 4-205.10.

1 ~~8.~~ 9. "Distributor" means any person that manufactures, produces,
2 ships, transports or imports into this state or in any manner acquires or
3 possesses for the purpose of making the first sale of the following:
4 (a) Cigarettes without Arizona tax stamps affixed as required by
5 this article.
6 (b) Roll-your-own tobacco or other tobacco products on which the
7 taxes have not been paid as required by this chapter.
8 ~~9.~~ 10. "Farm winery" has the same meaning prescribed in section
9 4-101.
10 ~~10.~~ 11. "First sale" means the initial sale or distribution in
11 intrastate commerce or the initial use or consumption of cigarettes,
12 roll-your-own tobacco or other tobacco products.
13 ~~11.~~ 12. "Luxury" means any article, object or device on which a
14 tax is imposed under this chapter.
15 ~~12.~~ 13. "Malt liquor" means any liquid that contains more than
16 one-half of one percent alcohol by volume and that is made by the process
17 of fermentation and not distillation of hops or grains, but not including:
18 (a) Liquids made by the process of distillation of such substances.
19 (b) Medicines that are unsuitable for beverage purposes.
20 ~~13.~~ 14. "Master settlement agreement" has the same meaning
21 prescribed in section 44-7101.
22 ~~14.~~ 15. "Microbrewery" has the same meaning prescribed in section
23 4-101.
24 ~~15.~~ 16. "Nonparticipating manufacturer" has the same meaning
25 prescribed in section 44-7111.
26 ~~16.~~ 17. "Other tobacco products" means tobacco products other than
27 cigarettes and roll-your-own tobacco.
28 ~~17.~~ 18. "Participating manufacturer" has the same meaning
29 prescribed in section 44-7111.
30 ~~18.~~ 19. "Person" means any individual, firm, partnership, joint
31 venture, association, corporation, municipal corporation, estate, trust,
32 club, society or other group or combination acting as a unit, and the
33 plural as well as the singular number.
34 ~~19.~~ 20. "Place of business" means a building, facility site or
35 location where an order is received or where tobacco products are sold,
36 distributed or transferred. Place of business does not include a vehicle.
37 ~~20.~~ 21. "Retailer" means any person that comes into possession of
38 any luxury subject to the taxes imposed by this chapter for the purpose of
39 selling it for consumption and not for resale.
40 ~~21.~~ 22. "Roll-your-own tobacco" means any tobacco that, because of
41 its appearance, type, packaging or labeling, is suitable for use and
42 likely to be offered to or purchased by consumers as tobacco for making
43 cigarettes. This paragraph shall be interpreted consistently with the
44 term as used in section 44-7101. This paragraph shall be interpreted

1 consistently with the classification guidelines established by the federal
2 alcohol and tobacco tax and trade bureau.

3 ~~22.~~ 23. "Smoking tobacco" means any tobacco that, because of its
4 appearance, type, packaging, labeling or promotion, is suitable for use
5 and likely to be offered to or purchased by consumers as tobacco for
6 making cigarettes or otherwise consumed by burning. Smoking tobacco
7 includes pipe tobacco and roll-your-own tobacco.

8 ~~23.~~ 24. "Spirituous liquor" means any liquid that contains more
9 than one-half of one percent alcohol by volume, that is produced by
10 distillation of any fermented substance and that is used or prepared for
11 use as a beverage. Spirituous liquor does not include medicines that are
12 unsuitable for beverage purposes.

13 ~~24.~~ 25. "Tobacco product manufacturer" has the same meaning
14 prescribed in section 44-7101.

15 ~~25.~~ 26. "Tobacco products" means all luxuries included in section
16 42-3052, paragraphs 5 through 9.

17 ~~26.~~ 27. "Vehicle" means a device in, on or by which a person or
18 property is or may be transported or drawn on the roads of this state
19 regardless of the means by which it is propelled or whether it runs on a
20 track.

21 ~~27.~~ 28. "Vinous liquor" means any liquid that contains more than
22 one-half of one percent alcohol by volume and that is made by the process
23 of fermentation of grapes, berries, fruits, vegetables or other substances
24 but does not include:

25 (a) Liquids in which hops or grains are used in the process of
26 fermentation.

27 (b) Liquids made by the process of distillation of hops or grains.

28 (c) Medicines that are unsuitable for beverage purposes.

29 ~~28.~~ 29. "Wholesaler" means a person that sells any spirituous,
30 vinous or malt liquor taxed under this chapter to retail dealers or for
31 the purposes of resale only.

32 Sec. 2. Section 42-3401, Arizona Revised Statutes, is amended to
33 read:

34 42-3401. Tobacco distributor licenses; application;
35 conditions; revocations and cancellations

36 A. Every person acquiring or possessing for the purpose of making
37 the initial sale or distribution in this state of any tobacco products on
38 which a tax is imposed by this chapter shall obtain from the department a
39 license to sell tobacco products. The application for the license shall
40 be in the form provided by the department and shall be accompanied by a
41 fee of ~~twenty-five dollars~~ \$25 for each place of business listed in the
42 application. The form shall state that the identity of the applicant will
43 be posted to the department's website for public inspection. The
44 application for a license shall include the applicant's name and address,
45 the applicant's principal place of business, all other places of business

1 where the applicant's business is conducted for the purpose of making the
2 initial sale or distribution of tobacco products in this state, including
3 any location that maintains an inventory of tobacco products, and any
4 other information required by the department. THE APPLICANT'S PRINCIPAL
5 PLACE OF BUSINESS AND OTHER BUSINESS LOCATIONS MAY NOT INCLUDE A
6 RESIDENTIAL LOCATION OR POST OFFICE BOX ADDRESS, EXCEPT AS ALLOWED UNDER
7 SUBSECTION D, PARAGRAPH 2, SUBDIVISION (c) OF THIS SECTION. If the
8 applicant is a firm, partnership, limited liability company, limited
9 liability partnership or association, the applicant shall list the name
10 and address of each of the applicant's members. If the applicant is a
11 corporation, the application shall list the name and address of the
12 applicant's officers and any person who directly or indirectly owns an
13 aggregate amount of ten percent or more of the ownership interest in the
14 corporation. If a licensee is a corporation, firm, partnership, limited
15 liability company, limited liability partnership or association, the
16 licensee under this subsection shall notify the department in writing
17 within thirty days after any change in membership, legal entity status or
18 ownership of more than fifty percent of the total ownership interest in a
19 single transaction. If a licensee changes its business location, the
20 licensee under this subsection shall notify the department within thirty
21 days after a change in location. If the licensee is making a change in
22 its business location by adding or replacing one or more additional places
23 of business that are not currently listed on its application, the licensee
24 must remit a fee of ~~twenty-five dollars~~ \$25 for each additional place of
25 business.

26 B. For the purposes of subsection A of this section, an applicant
27 with a controlling interest in more than one business engaged in
28 activities as a distributor shall apply for a single license encompassing
29 all such businesses and list each place of business in its application.
30 For the purposes of this subsection, "controlling interest" means direct
31 or indirect ownership of at least eighty percent of the voting shares of a
32 corporation or of the interests in a company, business or person other
33 than a corporation.

34 C. The department shall issue a license authorizing the applicant
35 to acquire or possess tobacco products in this state on the condition that
36 the applicant complies with this chapter and the rules of the department.
37 The license:

38 1. Shall be nontransferable. A licensee may not transfer its
39 license to a new owner when selling its business, and any court-appointed
40 trustee, receiver or other person shall obtain a license in its own name
41 in cases of liquidation, insolvency, ~~or~~ bankruptcy or pursuant to a court
42 order if the business remains in operation as a distributor of tobacco
43 products. A licensee shall apply for a new license if it changes its
44 legal entity status or otherwise changes the legal structure of its
45 business.

1 2. Shall be valid for one year unless earlier CANCELLED OR revoked
2 by the department.

3 3. Shall be displayed in a conspicuous place at the licensee's
4 place of business. If the licensee operates from more than one place of
5 business, the licensee must display a copy of its license in a conspicuous
6 place at each location.

7 D. As a condition of licensure under this section, an applicant
8 agrees to the following conditions:

9 1. A person may not hold or store any tobacco products, whether
10 within or outside of this state, for sale or distribution in this state by
11 or on behalf of a distributor at any place other than a location that has
12 been disclosed to the department pursuant to subsection A of this section.
13 This paragraph does not include a person holding or storing tobacco
14 products by or on behalf of the distributor when the tobacco products are
15 in transit to a distributor or retailer as part of a lawful sale.

16 2. All tobacco products held or stored, whether within or outside
17 of this state, for sale or distribution in this state by or on behalf of a
18 distributor:

19 (a) Shall be accessible to the department during normal business
20 hours without a judicial warrant or prior written consent of the
21 distributor.

22 (b) May not be held or stored ~~at a residential location or~~ in a
23 vehicle, EXCEPT AS ALLOWED UNDER SECTION 42-3403, SUBSECTION B.

24 (c) MAY NOT BE HELD OR STORED AT A RESIDENTIAL LOCATION, UNLESS THE
25 SOLE LUXURY FOR SALE OR DISTRIBUTION BY OR ON BEHALF OF THE DISTRIBUTOR IS
26 TAXED AS A CIGAR UNDER SECTION 42-3052, PARAGRAPH 8 OR 9 AND THE PRODUCT
27 WEIGHT OF THE CIGARS IS NOT MORE THAN FIVE HUNDRED POUNDS. IF THE PRODUCT
28 IS HELD OR STORED AT A RESIDENTIAL LOCATION, AS A CONDITION OF LICENSURE,
29 THE DISTRIBUTOR SHALL PROVIDE WRITTEN CONSENT AND ALLOW ACCESS TO THE
30 DEPARTMENT TO INSPECT THE STOCK OF LUXURIES AND ALL BOOKS, PAPERS,
31 INVOICES, RECORDS AND ELECTRONICALLY STORED DATA SHOWING SALES, RECEIPTS
32 AND PURCHASES OF LUXURIES. THE DISTRIBUTOR SHALL SUBMIT THE WRITTEN
33 CONSENT TO THE DEPARTMENT WITH THE LICENSE APPLICATION OR ON DEMAND OF THE
34 DEPARTMENT.

35 3. TOBACCO PRODUCTS MAY BE SOLD, TRANSFERRED OR DISTRIBUTED TO A
36 RETAILER LOCATED ON AN INDIAN RESERVATION IN THIS STATE ONLY IF THE
37 RETAILER IS REGISTERED WITH, AND HAS A REGISTRATION IDENTIFICATION NUMBER
38 ISSUED BY, THE DEPARTMENT.

39 E. A person who is convicted of an offense described in section
40 42-1127, subsection E is permanently ineligible to hold a license issued
41 under this section.

42 F. The department may not issue or renew a license to an applicant
43 and may revoke a license issued under subsection C of this section if any
44 of the following applies:

1 1. The applicant or licensee owes ~~one thousand dollars~~ \$1,000 or
2 more in delinquent taxes imposed on tobacco products under this chapter
3 that are not under protest or subject to a payment agreement.

4 2. The department has revoked any license held by the applicant or
5 licensee within the previous two years.

6 3. The applicant or licensee has been convicted of a crime that
7 relates to stolen or counterfeit cigarettes.

8 4. The applicant or licensee has imported cigarettes into the
9 United States for sale or distribution in violation of 19 United States
10 Code section 1681a.

11 5. The applicant or licensee has imported cigarettes into the
12 United States for sale or distribution without fully complying with the
13 federal cigarette labeling and advertising act (P.L. 89-92; 79 Stat. 282;
14 15 United States Code section 1331).

15 6. The applicant or licensee is in violation of section 13-3711 or
16 section 36-798.06, subsection A.

17 7. Pursuant to section 44-7111, section 6(a), the applicant or
18 licensee is in violation of section 44-7111, section 3(c).

19 8. The civil rights of the applicant or licensee have been
20 suspended under section 13-904. An applicant or licensee whose civil
21 rights have been suspended ~~will be~~ IS ineligible to hold a license for a
22 period of five years following the restoration of the applicant's or
23 licensee's civil rights.

24 G. In addition to any other civil or criminal penalty and except as
25 otherwise provided in this section, the department may deny the issuance
26 or renewal of ~~or suspend~~ or revoke a license issued under subsection C of
27 this section if the person violates any requirement under this title more
28 than two times within a three-year period or fails to otherwise maintain
29 the conditions of licensure in this section.

30 H. The department shall publish on its website the names of each
31 person who is issued a license under subsection C of this section,
32 including any trade names or business names used by the licensee. The
33 department shall update the published names at least once each month.

34 I. A person may not apply for or hold a distributor's license if
35 that person does not engage in the activities described in subsection A of
36 this section. In addition to any other applicable penalty, the department
37 may cancel the license of any licensee that fails to incur any tax
38 liability under this chapter for twelve consecutive months.

39 J. Any ~~suspension~~, revocation, cancellation or denial of a license
40 issued under this section by the department must comply with section
41 41-1092.11, subsection B.

42 K. Notwithstanding any other law, for the purposes of subsection F,
43 paragraphs 1 and 2 of this section, section 42-1127, subsection C and
44 section 42-3461, subsection B, if a distributor has listed in its
45 application more than one place of business, any ~~suspension~~, revocation,

1 cancellation, denial or nonrenewal of the distributor's license shall
2 apply only with effect to remove the place of business or business
3 location at which the activity occurred from the distributor's license.
4 If such a removal occurs, the distributor shall be subject to restrictions
5 that the department prescribes by rule.

6 Sec. 3. Section 42-3403, Arizona Revised Statutes, is amended to
7 read:

8 42-3403. Tobacco product retailers; vehicle as place of
9 business prohibited; exceptions

10 A. A retailer may sell any tobacco product that is not otherwise
11 prohibited by federal or state law from sale for resale, but a retailer
12 may not acquire or possess unstamped cigarettes, or other tobacco products
13 or cigarettes on which taxes levied under this chapter have not been paid,
14 unless the retailer holds a valid license issued under section 42-3401.

15 B. A person may not use a vehicle as a place of business for
16 selling, transferring or otherwise distributing tobacco products. This
17 subsection does not prohibit the lawful delivery of OTHER tobacco products
18 by a person who holds a valid license issued under section 42-3401, OR BY
19 THAT PERSON'S REPRESENTATIVE, using a vehicle that is owned, operated or
20 contracted by that person OR THAT PERSON'S REPRESENTATIVE. THAT PERSON OR
21 THAT PERSON'S REPRESENTATIVE IS EXPRESSLY ALLOWED TO USE SUCH A VEHICLE TO
22 CARRY AND STORE TAX-PAID OTHER TOBACCO PRODUCTS IN THE NORMAL COURSE OF
23 PERFORMING THE PERSON'S OR THE PERSON'S REPRESENTATIVE'S DUTIES, INCLUDING
24 FOR THE PURPOSE OF SELLING OTHER TOBACCO PRODUCTS TO, AND PERFORMING
25 SIMILAR LAWFUL TRANSACTIONS WITH, RETAILERS AND DISTRIBUTORS. IF A
26 VEHICLE IS USED BY A LICENSED DISTRIBUTOR TO CARRY AND STORE TAX-PAID
27 OTHER TOBACCO PRODUCTS, AS A CONDITION OF LICENSURE, THE DISTRIBUTOR SHALL
28 PROVIDE WRITTEN CONSENT AND ALLOW ACCESS TO THE DEPARTMENT TO INSPECT THE
29 STOCK OF LUXURIES AND ALL BOOKS, PAPERS, INVOICES, RECORDS AND
30 ELECTRONICALLY STORED DATA SHOWING SALES, RECEIPTS AND PURCHASES OF
31 LUXURIES. THE DISTRIBUTOR SHALL SUBMIT THE WRITTEN CONSENT TO THE
32 DEPARTMENT WITH THE LICENSE APPLICATION OR ON DEMAND OF THE DEPARTMENT.

33 C. This section does not prohibit business activities that are
34 ~~permitted~~ ALLOWED under sections 42-3454 and 42-3502 for both taxed and
35 untaxed tobacco products.

APPROVED BY THE GOVERNOR APRIL 10, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 10, 2019.