

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

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 WHICH EXCEED 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. If the applicant is a
7 firm, partnership, limited liability company, limited liability
8 partnership or association, the applicant shall list the name and address
9 of each of the applicant's members. If the applicant is a corporation, the
10 application shall list the name and address of the applicant's officers
11 and any person who directly or indirectly owns an aggregate amount of ten
12 percent or more of the ownership interest in the corporation. If a
13 licensee is a corporation, firm, partnership, limited liability company,
14 limited liability partnership or association, the licensee under this
15 subsection shall notify the department in writing within thirty days after
16 any change in membership, legal entity status or ownership of more than
17 fifty percent of the total ownership interest in a single transaction. If
18 a licensee changes its business location, the licensee under this
19 subsection shall notify the department within thirty days after a change
20 in location. If the licensee is making a change in its business location
21 by adding or replacing one or more additional places of business that are
22 not currently listed on its application, the licensee must remit a fee of
23 ~~twenty-five dollars~~ \$25 for each additional place of business.

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

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

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

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

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

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

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

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

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

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

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

32 E. A person who is convicted of an offense described in section
33 42-1127, subsection E is permanently ineligible to hold a license issued
34 under this section.

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

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

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

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

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

4 5. The applicant or licensee has imported cigarettes into the
5 United States for sale or distribution without fully complying with the
6 federal cigarette labeling and advertising act (P.L. 89-92; 79 Stat. 282;
7 15 United States Code section 1331).

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

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

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

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

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

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

32 J. Any ~~suspension,~~ revocation, cancellation or denial of a license
33 issued under this section by the department must comply with section
34 41-1092.11, subsection B.

35 K. Notwithstanding any other law, for the purposes of subsection F,
36 paragraphs 1 and 2 of this section, section 42-1127, subsection C and
37 section 42-3461, subsection B, if a distributor has listed in its
38 application more than one place of business, any ~~suspension,~~ revocation,
39 cancellation, denial or nonrenewal of the distributor's license shall
40 apply only with effect to remove the place of business or business
41 location at which the activity occurred from the distributor's license.
42 If such a removal occurs, the distributor shall be subject to restrictions
43 that the department prescribes by rule.

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

3 42-3403. Tobacco product retailers; vehicle as place of
4 business prohibited; exceptions

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

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

28 C. This section does not prohibit business activities that are
29 ~~permitted~~ **ALLOWED** under sections 42-3454 and 42-3502 for both taxed and
30 untaxed tobacco products.