

REFERENCE TITLE: **distilleries; licensing; environmental exemption**

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HB 2753

Introduced by
Representatives Hernandez A: Hernandez D, Weninger

AN ACT

AMENDING SECTIONS 4-205.08 AND 4-205.10, ARIZONA REVISED STATUTES;
AMENDING TITLE 4, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY
ADDING SECTION 4-225; RELATING TO LIQUOR.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 4-205.08, Arizona Revised Statutes, is amended
3 to read:

4 **4-205.08. Microbrewery license; issuance; regulatory**
5 **provisions; retail site**

6 A. The director may issue a microbrewery license to any
7 microbrewery. Each location that engages in producing, manufacturing and
8 bottling these products must obtain a separate microbrewery license. The
9 licensee may not transfer the microbrewery license from person to person
10 or from location to location.

11 B. An applicant for a microbrewery license, at the time of filing
12 the application for the license, shall accompany the application with the
13 license fee. Persons holding a microbrewery license shall report annually
14 at the end of each calendar year, at the time and in the manner as the
15 director prescribes, the amount of beer produced or manufactured by them
16 during the calendar year and the amount delivered pursuant to subsection
17 D, paragraph 4, subdivision (b) of this section. If the total amount of
18 beer that is produced or manufactured during the calendar year exceeds the
19 amount ~~permitted~~ ALLOWED annually by the license, the licensee shall apply
20 for and receive a producer's license only on surrender of the microbrewery
21 license or licenses and shall have no continuing rights as a microbrewery
22 under this section. On the surrender of the microbrewery license or
23 licenses, the licensee shall transfer, surrender or otherwise relinquish
24 control of all of its retail licenses located remotely from a
25 microbrewery.

26 C. Notwithstanding any other law, a licensed microbrewery may:

27 1. Sell beer produced or manufactured on the premises for
28 consumption on or off the premises.

29 2. Make sales and deliveries of beer that the microbrewery produces
30 or manufactures to persons licensed to sell beer under this title through
31 wholesalers licensed under this title or as provided in subsection D,
32 paragraph 4, subdivision (a) or (b) of this section.

33 3. Make sales and deliveries of beer that the microbrewery produces
34 or manufactures to persons licensed to sell beer in another state if
35 lawful under the laws of that state.

36 4. Serve beer produced or manufactured on the premises for the
37 purpose of sampling the beer.

38 5. Sell beer produced or manufactured by other microbreweries for
39 consumption only on the premises of the licensee, except that the sales
40 percentage of beer from other microbreweries may not exceed twenty percent
41 of the licensee's annual sales of beer by volume at the premises. If the
42 other microbrewery has established a distribution relationship with one or
43 more wholesalers ~~who~~ THAT are licensed under this title, the beer shall be
44 purchased through those wholesalers.

1 6. Maintain at no charge a tapping equipment system of a licensed
2 retailer when the microbrewery sells beer as provided in subsection D,
3 paragraphs 3 and 4 of this section, including cleaning the tapping
4 equipment system and replacing bonnet washers, friction rings, valve
5 stems, hardware, unions, clamps, air tees, screws, tapping devices, tower
6 heads and single air and beer lines.

7 D. A licensed microbrewery is subject to all of the following
8 requirements:

9 1. The microbrewery shall produce or manufacture not less than five
10 thousand gallons of beer in each calendar year following the first year of
11 operation.

12 2. The microbrewery shall not produce or manufacture more than six
13 million two hundred thousand gallons of beer in a calendar year.

14 3. If retail operations are conducted in conjunction with the
15 microbrewery, the microbrewery may sell other spirituous liquor products
16 if the microbrewery holds an on-sale retail license for a bar, beer and
17 wine bar, ~~or~~ restaurant. The microbrewery may be issued up to a combined
18 total of seven retail licenses in this state whether the premises are
19 located on or adjacent to a microbrewery or remotely from a microbrewery.
20 The limit on the number of retail licenses applies on an aggregated basis
21 to all microbreweries that are under common control of any person with
22 control of the microbrewery.

23 4. The microbrewery may make sales and deliveries of beer that it
24 has produced or manufactured to both:

25 (a) Retail licensees that meet the requirements prescribed in
26 paragraph 3 of this subsection in any amount.

27 (b) Any other retail licensee in a cumulative amount not to exceed
28 ninety-three thousand gallons in total for all licensed retailers in any
29 calendar year.

30 E. A microbrewery that produces or manufactures more than one
31 million two hundred forty thousand gallons of beer in a calendar year
32 maintains all of the rights associated with a microbrewery license, except
33 that the microbrewery shall not:

34 1. Apply for or receive a retail license pursuant to subsection D,
35 paragraph 3 of this section for premises that are located remotely from
36 the microbrewery.

37 2. Make sales or deliveries of beer that the microbrewery has
38 produced or manufactured to any retail licensee as provided in subsection
39 D, paragraph 4 of this section, except for the microbrewery's retail
40 licensees on or adjacent to the microbrewery.

41 F. The gallonage amounts prescribed in subsection D, paragraph 2
42 and subsection E of this section apply to the aggregate manufacture or
43 production of all microbreweries that are under common control of any
44 person with control of the microbrewery.

1 G. A microbrewery that is otherwise engaged as a distiller,
2 vintner, brewer, rectifier, blender or other producer of spirituous liquor
3 in any jurisdiction is prohibited from holding any retail license that is
4 located remotely from a microbrewery.

5 H. A microbrewery that sells or delivers beer pursuant to this
6 section shall:

7 1. Pay to the department of revenue all luxury taxes imposed
8 pursuant to title 42, chapter 3 and all transaction privilege or use taxes
9 imposed pursuant to title 42, chapter 5.

10 2. File all returns or reports required by law.

11 I. A delivery of beer by a microbrewery to a purchaser in this
12 state is a transaction deemed to have occurred in this state.

13 J. A MICROBREWERY LICENSEE MAY HOLD A CRAFT DISTILLER LICENSE
14 ISSUED PURSUANT TO SECTION 4-205.10. THE MICROBREWERY AND CRAFT DISTILLER
15 LICENSEE IS SUBJECT TO ALL OTHER REQUIREMENTS OF THIS SECTION AND SECTION
16 4-205.10. THE MICROBREWERY MAY PROVIDE SAMPLING AND SALES OF THE
17 DISTILLED SPIRITS PURSUANT TO SECTION 4-205.10, SUBSECTION C, PARAGRAPHS 2
18 AND 3 ON THE SAME PREMISES AS THE BEER SAMPLING AND RETAIL SALES.

19 ~~J.~~ K. The director shall adopt rules in order to administer this
20 section.

21 Sec. 2. Section 4-205.10, Arizona Revised Statutes, is amended to
22 read:

23 4-205.10. Craft distiller license: issuance: regulatory
24 provisions; fee

25 A. The director may issue a craft distiller license to any person
26 that meets the requirements of subsection C of this section. Each
27 location that engages in producing and bottling these products must obtain
28 a separate craft distiller license. The licensee may not transfer the
29 craft distiller license from person to person or from location to location
30 and may not also hold a producer's license. The licensee and all commonly
31 controlled craft distiller licensees may not manufacture or produce more
32 than twenty thousand gallons of distilled spirits in a calendar year. For
33 the purposes of this section, annual gallonage shall be the total proof
34 gallons of finished distilled product available for wholesale or retail
35 sale as defined by 26 United States Code section 5002 and rules adopted
36 pursuant to this section or its successor.

37 B. Persons holding a craft distiller license shall report annually
38 at the end of each calendar year, at the time and in the manner as the
39 director prescribes, the amount of distilled spirits that is produced or
40 manufactured by that licensee during the calendar year. In addition to
41 any other provision of this title, if the total amount of distilled
42 spirits that is produced or manufactured during the year exceeds the
43 amount that is permitted annually by the license, the licensee shall apply
44 for and, on qualification, receive a producer's license only on the

1 surrender of the craft distiller license and shall have no continuing
2 rights as a craft distiller licensee under this section.

3 C. A person may be licensed as a craft distiller to sell distilled
4 spirits that are produced or manufactured by the person if in a calendar
5 year the person produces or manufactures not more than twenty thousand
6 gallons of distilled spirits and may make sales and deliveries of
7 distilled spirits only as specified in this section and subject to the
8 following criteria:

9 1. A licensed craft distiller may make sales and deliveries of
10 distilled spirits to wholesalers that are licensed to sell distilled
11 spirits under this title.

12 2. A licensed craft distiller may serve distilled spirits that are
13 produced or manufactured on the premises for the purpose of consumption on
14 the premises and may charge for samples on the premises of the craft
15 distiller.

16 3. A licensed craft distiller may sell distilled spirits that are
17 produced or manufactured on the premises in the original container for
18 consumption off the premises to a consumer who is physically present on
19 the premises.

20 4. The licensed craft distiller may hold one license prescribed in
21 section 4-209, subsection B, paragraph 6 or 12 on or adjacent to the
22 licensed craft distiller premises. The licensed craft distiller shall
23 purchase all other spirituous liquor for sale at the on-sale retail
24 premises from wholesalers that are licensed in this state, except that a
25 licensed craft distiller may:

26 (a) Purchase distilled spirits from other craft distillers that are
27 licensed in this state. Sales of craft distillery products not produced
28 or manufactured by the craft distiller shall be limited to no more than
29 twenty percent of the total sales by volume.

30 (b) Make deliveries of the distilled spirits that the craft
31 distiller manufactures or produces to any commonly controlled retail
32 licensed premises or to the craft distiller's remote tasting rooms and
33 that are authorized pursuant to this paragraph.

34 5. A licensed craft distiller that produces not more than one
35 thousand one hundred eighty-nine gallons of distilled spirits in a
36 calendar year may make sales and deliveries of distilled spirits that the
37 licensed craft distiller produces to on-sale and off-sale retailers.

38 6. Notwithstanding section 4-244, paragraphs 3 and 7, an on-sale or
39 off-sale retailer may purchase and accept delivery of distilled spirits
40 from a licensed craft distiller pursuant to paragraph 5 of this
41 subsection.

42 7. A licensed craft distiller may make sales and deliveries of
43 distilled spirits that the licensed craft distiller manufactures or
44 produces to consumers off of the licensed premises if the sale or delivery

1 is ordered by telephone, mail, fax, catalogue, the internet or by other
2 means if all of the following conditions exist:

3 (a) The purchaser of the distilled spirits provided the licensed
4 craft distiller with verification of the purchaser's legal age to purchase
5 alcohol and a copy of same is maintained in the records of the craft
6 distiller.

7 (b) The shipping container in which the distilled spirits are
8 shipped is marked to require the signature on delivery of an adult who is
9 of legal age to purchase alcohol and delivery confirmation.

10 (c) The distilled spirits are for personal use only and not for
11 resale.

12 (d) The distilled spirits are shipped to a residential or business
13 address other than a premises licensed pursuant to this title.

14 (e) The purchaser could have carried the distilled spirits lawfully
15 into or within this state.

16 (f) A person who is at least twenty-one years of age makes the
17 delivery.

18 (g) The craft distiller collects payment for the price of the
19 spirituous liquor ~~TO~~ NOT later than at the time of delivery.

20 D. On application by a craft distiller licensee, the director may
21 authorize a craft distiller licensee to operate two other remote tasting
22 and retail premises if:

23 1. The distilled spirits sold at the premises are limited to
24 distilled spirits produced or manufactured by the licensed craft
25 distillery and distilled spirits produced or manufactured by another
26 licensed craft distillery. The craft distillery may sell to a consumer
27 physically present on the premises distilled spirits produced by the craft
28 distillery or by other licensed craft distilleries in the original
29 container for consumption on or off the premises. The sales of the
30 distilled spirits produced or manufactured by other craft distilleries
31 shall not exceed twenty percent of the craft distillery's total sales by
32 volume.

33 2. The craft distiller licensee:

34 (a) Remains responsible for the premises.

35 (b) Obtains approval for the premises from the local governing body
36 before submitting an application to the department. A copy of an order
37 from the local governing body recommending approval of the premises must
38 be filed with the department as part of the application.

39 (c) Does not sublease the premises.

40 (d) Has an agent who is a natural person who meets the
41 qualifications of licensure in this state.

42 (e) Meets the qualifications for a license pursuant to section
43 4-203, subsection A.

44 (f) For a tasting room with a shared patio, meets the requirements
45 prescribed in section 4-205.12.

1 E. A craft distiller licensee may ~~hold~~ EITHER OF THE FOLLOWING:

2 1. A farm winery license issued pursuant to section 4-205.04. The
3 craft distiller licensee and farm winery licensee are subject to all other
4 requirements of this section and section 4-205.04. The craft distiller
5 may provide sampling and retail sales of distilled spirits pursuant to
6 subsection C, paragraphs 2 and 3 of this section on the same premises as
7 the wine sampling and retail sales.

8 2. A MICROBREWERY LICENSE ISSUED PURSUANT TO 4-205.08. THE CRAFT
9 DISTILLER AND MICROBREWERY LICENSEE IS SUBJECT TO ALL OTHER REQUIREMENTS
10 OF THIS SECTION AND SECTION 4-205.08. THE CRAFT DISTILLER MAY PROVIDE
11 SAMPLING AND RETAIL SALES OF BEER PURSUANT TO SECTION 4-205.08 ON THE SAME
12 PREMISES AS THE DISTILLED SPIRITS SAMPLING AND RETAIL SALES.

13 F. The craft distiller is liable for any violation that is
14 committed in connection with any sale or delivery of the distilled
15 spirits. The rules adopted by the director pursuant to section 4-203,
16 subsection J apply to the delivery of distilled spirits under subsection C
17 of this section. An act or omission of any person who makes a sale or
18 delivery of distilled spirits for a licensee under subsection C of this
19 section is deemed to be an act or omission of the licensee for the
20 purposes of section 4-210, subsection A, paragraph 9.

21 G. A craft distiller that sells or delivers distilled spirits
22 pursuant to this section shall:

23 1. Pay to the department of revenue all luxury taxes that are
24 imposed pursuant to title 42, chapter 3 and all transaction privilege or
25 use taxes that are imposed pursuant to title 42, chapter 5.

26 2. File all returns or reports that are required by law.

27 H. A delivery of distilled spirits by a craft distiller to a
28 purchaser in this state is a transaction deemed to have occurred in this
29 state.

30 I. The production and storage space of the craft distiller are
31 excluded from the public area of the licensed craft distiller premises.
32 Pursuant to section 4-118, the director, the director's agents or any
33 peace officer may inspect spaces excluded by this subsection. For the
34 purposes of this subsection:

35 1. "Production and storage ~~spaces~~ SPACE" means A bonded ~~areas~~ AREA,
36 tax-paid storage ~~areas~~ AREA and ~~areas~~ AREA that ~~provide~~ PROVIDES no
37 services to the public.

38 2. "Public area" means a place within a licensed and bonded craft
39 distiller that is accessible to the public and in which the craft
40 distiller sells and samples tax-paid product and authorizes the presence
41 of members of the public.

42 J. The director may adopt rules in order to administer this
43 section.

44 K. The director may charge a fee adopted pursuant to section 4-209
45 for the issuance of a license pursuant to this section.

1 L. The director may issue a craft distiller license to be located
2 on the same parcel of land as a farm winery licensed pursuant to section
3 4-205.04.

4 Sec. 3. Title 4, chapter 2, article 2, Arizona Revised Statutes, is
5 amended by adding section 4-225, to read:

6 4-225. Food safety; federal law; preemption

7 A. SUBJECT TO SUBSECTION B OF THIS SECTION, LICENSED PRODUCERS,
8 CRAFT DISTILLERS, BREWERS AND FARM WINERIES ARE SUBJECT TO THE RULES AND
9 EXEMPTIONS PRESCRIBED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION
10 PURSUANT TO 21 CODE OF FEDERAL REGULATIONS PART 112 RELATING TO FOOD
11 SAFETY.

12 B. THIS SECTION APPLIES ONLY TO PRODUCTION AND STORAGE SPACES AS
13 DEFINED IN SECTION 4-205.10. PRODUCTION AND STORAGE SPACES ARE NOT
14 SUBJECT TO NON-FEDERAL FOOD SAFETY GUIDELINES ADOPTED BY LOCAL GOVERNING
15 BOARDS.