

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2888

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 36-798.06, Arizona Revised Statutes, is amended
3 to read:

4 36-798.06. Delivery sales prohibited; common carriers;
5 penalties; forfeiture; unlawful practice;
6 exceptions; violation; classification;
7 definitions

8 A. A person shall not do either of the following:

9 1. Cause a tobacco product to be ordered or purchased by anyone
10 other than a licensed person or a retailer who orders or purchases from a
11 licensed person, including by ordering or purchasing a tobacco product.

12 2. Knowingly provide substantial assistance to a person who violates
13 this section.

14 B. A common carrier shall not knowingly transport a tobacco product
15 for a person who is in violation of this section.

16 C. Each order or purchase of a tobacco product in violation of
17 subsection A, paragraph 1 of this section constitutes a separate violation
18 under this section.

19 D. In addition to any other penalty, a person who violates this
20 section is subject to all of the following:

21 1. A civil penalty in an amount not to exceed \$5,000 for each
22 violation.

23 2. An injunction to restrain a threatened or actual violation of
24 this section.

1 3. Recovery by this state for:

2 (a) The costs of any investigation related to a violation of this
3 section.

4 (b) The cost of expert witness fees in any action related to a
5 violation of this section.

6 (c) The cost of the action related to a violation of this section.

7 (d) Reasonable attorney fees.

8 4. All state tobacco taxes due under title 42, chapter 3, except as
9 prohibited under section 42-3402, and all transaction privilege or use
10 taxes due under title 42, chapter 5, including any penalties and interest.

11 E. All tobacco products that are seized for a violation of this
12 section shall be forfeited to the state and destroyed pursuant to section
13 42-1124.

14 F. A violation of this section is an unlawful practice under section
15 44-1522 and is in addition to all other causes of action, remedies and
16 penalties that are available to this state. The attorney general may
17 investigate and take appropriate action pursuant to title 44, chapter 10,
18 article 7.

19 G. This section does not apply to any of the following:

20 1. The shipment of a tobacco product to a foreign trade zone that is
21 established under 19 United States Code sections 81a through 81u and title
22 44, chapter 18 and that is located in this state if the tobacco product is
23 from outside of this country, was ordered by a distributor in another state
24 and is not distributed in this state.

25 2. A government employee who is acting in the course of the
26 employee's official duties.

27 3. The shipment of a tobacco product to a university that is
28 acquiring the tobacco product to use to conduct basic and applied research,
29 if the tobacco product is exempt from federal excise tax under 26 United
30 States Code section 5704(a).

31 H. A person who violates this section is guilty of a class 6 felony.

32 I. For the purposes of this section:

1 1. "Licensed person" means a person who is required to be licensed
2 under section 42-3401.

3 2. "Order or purchase" means any of the following:

4 (a) By mail or delivery service.

5 (b) Through the internet or a computer network.

6 (c) By telephone.

7 (d) Through any other electronic method.

8 3. "Person" means an individual, partnership, firm, association,
9 corporation, limited liability company or partnership, joint venture or
10 other entity.

11 4. "Retailer" has the same meaning prescribed in section 42-5001.

12 5. "Tobacco product" means all luxuries included in section 42-3052,
13 paragraphs 4, 5, ~~AND 6 and 7~~. Tobacco product does not include pipe
14 tobacco or cigars.

15 Sec. 2. Section 42-3001, Arizona Revised Statutes, is amended to
16 read:

17 42-3001. Definitions

18 In this chapter, unless the context otherwise requires:

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

21 2. "Brand family" has the same meaning prescribed in section
22 44-7111.

23 3. "Cavendish" means a tobacco product that is smoked from a pipe
24 and that meets one of the following criteria:

25 (a) Is described as cavendish, as containing cavendish or as a
26 cavendish blend on its packaging, labeling or promotional materials.

27 (b) Appears to have been processed or manufactured with an amount of
28 flavorings and humectants that exceeds twenty percent of the weight of the
29 tobacco contained in the product.

30 (c) Appears to be blended with or contain a tobacco product
31 described in subdivision (b) of this paragraph.

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

7 5. "Cigar" means any roll of tobacco wrapped in leaf tobacco or in
8 any substance containing tobacco other than any roll of tobacco that is a
9 cigarette, as defined in paragraph 6, subdivision (b) of this section.

10 6. "Cigarette" means either of the following:

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

13 (b) Any roll of tobacco wrapped in any substance containing tobacco
14 that, because of its appearance, the type of tobacco used in the filler or
15 its packaging and labeling, is likely to be offered to or purchased by a
16 consumer as a cigarette described in subdivision (a) of this paragraph.
17 This subdivision shall be interpreted consistently with the classification
18 guidelines established by the federal alcohol and tobacco tax and trade
19 bureau.

20 7. "Consumer" means a person in this state that comes into
21 possession of any luxury subject to the tax imposed by this chapter and
22 that, on coming into possession of the luxury, is not a distributor
23 intending to sell or distribute the luxury, a retailer or a wholesaler.

24 8. "Craft distiller" means a distiller in the United States or in a
25 territory or possession of the United States that holds a license pursuant
26 to section 4-205.10.

27 9. "Distributor" means any person that manufactures, produces,
28 ships, transports or imports into this state or in any manner acquires or
29 possesses for the purpose of making the first sale of the following:

30 (a) Cigarettes without Arizona tax stamps affixed as required by
31 this article.

1 (b) Roll-your-own tobacco or other tobacco products on which the
2 taxes have not been paid as required by this chapter.

3 10. "Farm winery" has the same meaning prescribed in section 4-101.

4 11. "First sale" means the initial sale or distribution in
5 intrastate commerce or the initial use or consumption of cigarettes,
6 roll-your-own tobacco or other tobacco products.

7 12. "Luxury" means any article, object or device on which a tax is
8 imposed under this chapter.

9 13. "Malt liquor" means any liquid that contains more than one-half
10 of one percent alcohol by volume and that is made by the process of
11 fermentation and not distillation of hops or grains, but not including:

12 (a) Liquids made by the process of distillation of such substances.

13 (b) Medicines that are unsuitable for beverage purposes.

14 14. "Master settlement agreement" has the same meaning prescribed in
15 section 44-7101.

16 15. "Microbrewery" has the same meaning prescribed in section 4-101.

17 16. "Nonparticipating manufacturer" has the same meaning prescribed
18 in section 44-7111.

19 17. "Other tobacco products" means tobacco products other than
20 cigarettes and roll-your-own tobacco.

21 18. "Participating manufacturer" has the same meaning prescribed in
22 section 44-7111.

23 19. "Person" means any individual, firm, partnership, joint venture,
24 association, corporation, municipal corporation, estate, trust, club,
25 society or other group or combination acting as a unit, and the plural as
26 well as the singular number.

27 20. "Place of business" means a building, facility site or location
28 where an order is received or where tobacco products are sold, distributed
29 or transferred. Place of business does not include a vehicle.

30 21. "Retailer" means any person that comes into possession of any
31 luxury subject to the taxes imposed by this chapter for the purpose of
32 selling it for consumption and not for resale.

1 22. "Roll-your-own tobacco" means any tobacco that, because of its
2 appearance, type, packaging or labeling, is suitable for use and likely to
3 be offered to or purchased by consumers as tobacco for making cigarettes.
4 This paragraph shall be interpreted consistently with the term as used in
5 section 44-7101. This paragraph shall be interpreted consistently with the
6 classification guidelines established by the federal alcohol and tobacco
7 tax and trade bureau.

8 23. "Smoking tobacco" means any tobacco that, because of its
9 appearance, type, packaging, labeling or promotion, is suitable for use and
10 likely to be offered to or purchased by consumers as tobacco for making
11 cigarettes or otherwise consumed by burning. Smoking tobacco includes pipe
12 tobacco and roll-your-own tobacco.

13 24. "Spirituous liquor" means any liquid that contains more than
14 one-half of one percent alcohol by volume, that is produced by distillation
15 of any fermented substance and that is used or prepared for use as a
16 beverage. Spirituous liquor does not include medicines that are unsuitable
17 for beverage purposes.

18 25. "Tobacco product manufacturer" has the same meaning prescribed
19 in section 44-7101.

20 26. "Tobacco products" means all luxuries included in section
21 42-3052, paragraphs ~~5 through 9~~ 4, 5, 6, 7 AND 8.

22 27. "Vehicle" means a device in, on or by which a person or property
23 is or may be transported or drawn on the roads of this state regardless of
24 the means by which it is propelled or whether it runs on a track.

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

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

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

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

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

4 Sec. 3. Section 42-3052, Arizona Revised Statutes, is amended to
5 read:

6 42-3052. Classifications of luxuries; rates of tax

7 The taxes under this chapter are imposed at the following rates:

8 1. On each sealed container of spirituous liquor at the rate of
9 ~~three dollars per gallon and at a proportionate rate for any lesser or~~
10 ~~greater quantity than one gallon~~ \$.025 PER OUNCE OF ALCOHOL IN THE
11 CONTAINER AND AT A PROPORTIONATE RATE FOR ANY LESSER OR GREATER QUANTITY
12 THAN ONE OUNCE.

13 2. On each container of vinous liquor, except cider, ~~of which the~~
14 ~~alcoholic content is not greater than twenty-four per cent by volume at the~~
15 ~~rate of eighty-four cents per gallon and at a proportionate rate for any~~
16 ~~lesser or greater quantity than one gallon~~ AT A RATE OF \$.025 PER OUNCE OF
17 ALCOHOL IN THE CONTAINER AND AT A PROPORTIONATE RATE FOR ANY LESSER OR
18 GREATER QUANTITY THAN ONE OUNCE.

19 ~~3. On each container of vinous liquor of which the alcoholic content~~
20 ~~is greater than twenty-four per cent by volume, containing eight ounces or~~
21 ~~less, twenty-five cents, and for each eight ounces for containers~~
22 ~~containing more than eight ounces, twenty-five cents.~~

23 ~~4.~~ 3. On each ~~gallon~~ CONTAINER of malt liquor or cider, ~~sixteen~~
24 ~~cents, and at a proportionate rate for any lesser or greater quantity than~~
25 ~~one gallon~~ AT A RATE OF \$.025 PER OUNCE OF ALCOHOL IN THE CONTAINER AND AT
26 A PROPORTIONATE RATE FOR ANY LESSER OR GREATER QUANTITY THAN ONE OUNCE.

27 ~~5.~~ 4. On each cigarette, ~~nine-tenths cent~~ \$.009.

28 ~~6.~~ 5. On smoking tobacco, snuff, fine cut chewing tobacco, cut and
29 granulated tobacco, shorts and refuse of fine cut chewing tobacco, and
30 refuse, scraps, clippings, cuttings and sweepings of tobacco, excluding
31 tobacco powder or tobacco products used exclusively for agricultural or

1 horticultural purposes and unfit for human consumption, ~~two cents~~ \$.02 per
2 ounce or major fraction of an ounce.

3 ~~7.~~ 6. On all cavendish, plug or twist tobacco, ~~one-half cent~~ \$.005
4 per ounce or fractional part of an ounce.

5 ~~8.~~ 7. On each twenty small cigars or fractional part weighing not
6 more than three pounds per thousand, ~~four cents~~ \$.04.

7 ~~9.~~ 8. On cigars of all descriptions except those included in
8 paragraph ~~8~~ 7 of this section, made of tobacco or any tobacco substitute:

9 (a) If manufactured to retail at not more than ~~five cents~~ \$.05 each,
10 ~~two cents~~ \$.02 on each three cigars.

11 (b) If manufactured to retail at more than ~~five cents~~ \$.05 each, ~~two~~
12 ~~cents~~ \$.02 on each cigar.

13 Sec. 4. Section 42-3103, Arizona Revised Statutes, is amended to
14 read:

15 42-3103. Monies allocated for state school aid

16 The department shall allocate the following monies for the purpose of
17 state school aid:

18 1. 1.17 ~~per cent~~ PERCENT of the monies collected pursuant to section
19 42-3052, paragraph 1.

20 2. 14 ~~per cent~~ PERCENT of the monies collected pursuant to section
21 42-3052, paragraph ~~3~~ 2.

22 3. 19.44 ~~per cent~~ PERCENT of the monies collected pursuant to
23 section 42-3052, paragraph ~~5~~ 4.

24 Sec. 5. Section 42-3104, Arizona Revised Statutes, is amended to
25 read:

26 42-3104. Monies allocated to the corrections fund

27 The department shall deposit, pursuant to sections 35-146, 35-147 and
28 42-1116, the following monies in the corrections fund established by
29 section 41-1641:

30 1. 20 percent of the monies collected pursuant to section 42-3052,
31 paragraph 1.

1 2. 50 percent of the monies collected pursuant to section 42-3052,
2 paragraph 2.

3 ~~3. 50 percent of the monies collected pursuant to section 42-3052,~~
4 ~~paragraph 3.~~

5 ~~4.~~ 3. 50 percent of the monies collected pursuant to section
6 42-3052, paragraph 4.

7 ~~5.~~ 4. 11.11 percent of the monies collected pursuant to section
8 42-3052, paragraph ~~5~~ 4.

9 ~~6.~~ 5. 50 percent of the monies collected pursuant to section
10 42-3052, paragraph ~~6~~ 5.

11 ~~7.~~ 6. 50 percent of the monies collected pursuant to section
12 42-3052, paragraph ~~7~~ 6.

13 ~~8.~~ 7. 50 percent of the monies collected pursuant to section
14 42-3052, paragraph ~~8~~ 7.

15 ~~9.~~ 8. 50 percent of the monies collected pursuant to section
16 42-3052, paragraph ~~9~~ 8.

17 Sec. 6. Section 42-3106, Arizona Revised Statutes, is amended to
18 read:

19 42-3106. Monies allocated to the drug treatment and education
20 fund; state department of corrections revolving
21 fund

22 A. Notwithstanding any law to the contrary, seven percent of the
23 monies collected pursuant to section 42-3052, paragraph 1 and eighteen
24 percent of the monies collected pursuant to section 42-3052, paragraphs
25 ~~2,~~ AND 3 ~~and~~ 4 shall be deposited in the drug treatment and education fund
26 established by section 13-901.02.

27 B. Notwithstanding any law to the contrary, three percent of the
28 monies collected pursuant to section 42-3052, paragraph 1 and seven percent
29 of the monies collected pursuant to section 42-3052, paragraphs ~~2,~~ AND 3
30 ~~and~~ 4 shall be deposited in a separate revolving fund of the state
31 department of corrections.

1 C. Monies in the separate revolving fund of the state department of
2 corrections shall be used for the following purposes:

3 1. Implementing section 31-411.01.

4 2. Offender participation in appropriate drug treatment programs
5 that are administered by the state department of corrections or by a
6 qualified agency, organization or individual that is approved or licensed
7 by the department of health services or the board of behavioral health
8 examiners.

9 3. Reentry, education or mental health assistance programs that are
10 administered by the state department of corrections or by a qualified
11 agency, organization or individual.

12 D. Monies that are deposited in the state department of corrections
13 revolving fund pursuant to subsection B of this section shall not revert to
14 the state general fund if unexpended at the close of the fiscal year.

15 E. If the state department of corrections receives a federal grant,
16 any portion of the monies that are deposited pursuant to subsection B of
17 this section may be used as a cash match.

18 Sec. 7. Section 42-3401, Arizona Revised Statutes, is amended to
19 read:

20 42-3401. Tobacco distributor licenses; application;
21 conditions; revocations and cancellations

22 A. Every person acquiring or possessing for the purpose of making
23 the initial sale or distribution in this state of any tobacco products on
24 which a tax is imposed by this chapter shall obtain from the department a
25 license to sell tobacco products. The application for the license shall be
26 in the form provided by the department and shall be accompanied by a fee of
27 \$25 for each place of business listed in the application. The form shall
28 state that the identity of the applicant will be posted to the department's
29 website for public inspection. The application for a license shall include
30 the applicant's name and address, the applicant's principal place of
31 business, all other places of business where the applicant's business is
32 conducted for the purpose of making the initial sale or distribution of

1 tobacco products in this state, including any location that maintains an
2 inventory of tobacco products, and any other information required by the
3 department. The applicant's principal place of business and other business
4 locations may not include a residential location or post office box
5 address, except as allowed under subsection D, paragraph 2, subdivision (c)
6 of this section. If the applicant is a firm, partnership, limited
7 liability company, limited liability partnership or association, the
8 applicant shall list the name and address of each of the applicant's
9 members. If the applicant is a corporation, the application shall list the
10 name and address of the applicant's officers and any person who directly or
11 indirectly owns an aggregate amount of ten percent or more of the ownership
12 interest in the corporation. If a licensee is a corporation, firm,
13 partnership, limited liability company, limited liability partnership or
14 association, the licensee under this subsection shall notify the department
15 in writing within thirty days after any change in membership, legal entity
16 status or ownership of more than fifty percent of the total ownership
17 interest in a single transaction. If a licensee changes its business
18 location, the licensee under this subsection shall notify the department
19 within thirty days after a change in location. If the licensee is making a
20 change in its business location by adding or replacing one or more
21 additional places of business that are not currently listed on its
22 application, the licensee must remit a fee of \$25 for each additional place
23 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 activities
26 as a distributor shall apply for a single license encompassing all such
27 businesses and list each place of business in its application. For the
28 purposes of this subsection, "controlling interest" means direct or
29 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 than
31 a corporation.

1 C. The department shall issue a license authorizing the applicant to
2 acquire or possess tobacco products in this state on the condition that the
3 applicant complies with this chapter and the rules of the department. The
4 license:

5 1. Shall be nontransferable. A licensee may not transfer its
6 license to a new owner when selling its business, and any court-appointed
7 trustee, receiver or other person shall obtain a license in its own name in
8 cases of liquidation, insolvency or bankruptcy or pursuant to a court order
9 if the business remains in operation as a distributor of tobacco products.
10 In cases of liquidation, insolvency or bankruptcy or pursuant to a court
11 order, the department will not consider a business as remaining in
12 operation under this paragraph if the court-appointed trustee, receiver or
13 other person winds up the business within sixty days after the order is
14 issued. A licensee shall apply for a new license if it changes its legal
15 entity status or otherwise changes the legal structure of its business.

16 2. Shall be valid for one year unless earlier canceled or revoked by
17 the department.

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

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

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

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

4 (a) Shall be accessible to the department during normal business
5 hours without a judicial warrant or prior written consent of the
6 distributor.

7 (b) May not be held or stored in a vehicle, except as allowed under
8 section 42-3403, subsection B.

9 (c) May not be held or stored at a residential location, unless the
10 sole luxury for sale or distribution by or on behalf of the distributor is
11 taxed as a cigar under section 42-3052, paragraph ~~8~~ 7 or ~~9~~ 8 and the
12 product weight of the cigars is not more than five hundred pounds. If the
13 product is held or stored at a residential location, as a condition of
14 licensure, the distributor shall provide written consent and allow access
15 to the department to inspect the stock of luxuries and all books, papers,
16 invoices, records and electronically stored data showing sales, receipts
17 and purchases of luxuries. The distributor shall submit the written
18 consent to the department with the license application or on demand of the
19 department.

20 3. Tobacco products may be sold, transferred or distributed to a
21 retailer located on an Indian reservation in this state only if the
22 retailer is registered with, and has a registration identification number
23 issued by, the department.

24 E. A person who is convicted of an offense described in section
25 42-1127, subsection E is permanently ineligible to hold a license issued
26 under this section.

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

30 1. The applicant or licensee owes \$1,000 or more in delinquent taxes
31 imposed on tobacco products under this chapter that are not under protest
32 or subject to a payment agreement.

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

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

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

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

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

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

16 8. The civil rights of the applicant or licensee have been suspended
17 under section 13-904. An applicant or licensee whose civil rights have
18 been suspended is ineligible to hold a license for a period of five years
19 following the restoration of the applicant's or licensee's civil rights.

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

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

30 I. A person may not apply for or hold a distributor's license if
31 that person does not engage in the activities described in subsection A of
32 this section. In addition to any other applicable penalty, the department

1 may cancel the license of any licensee that fails to incur any tax
2 liability under this chapter for twelve consecutive months.

3 J. Any revocation, cancellation or denial of a license issued under
4 this section by the department must comply with section 41-1092.11,
5 subsection B.

6 K. Notwithstanding any other law, for the purposes of subsection F,
7 paragraphs 1 and 2 of this section, section 42-1127, subsection C and
8 section 42-3461, subsection B, if a distributor has listed in its
9 application more than one place of business, any revocation, cancellation,
10 denial or nonrenewal of the distributor's license shall apply only with
11 effect to remove the place of business or business location at which the
12 activity occurred from the distributor's license. If such a removal
13 occurs, the distributor shall be subject to restrictions that the
14 department prescribes by rule."

15 Amend title to conform

NEAL CARTER

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