

REFERENCE TITLE: liquor licenses; issuance; prohibition.

State of Arizona
House of Representatives
Fifty-seventh Legislature
First Regular Session
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HB 2773

Introduced by
Representatives Tsosie: De Los Santos, Gutierrez, Hernandez A, Hernandez
C, Márquez, Volk

AN ACT

AMENDING SECTION 4-203, ARIZONA REVISED STATUTES; RELATING TO LIQUOR
LICENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 4-203, Arizona Revised Statutes, is amended to read:

4-203. Licenses; issuance; transfer; reversion to state; tastings; rules; off-sale privileges; order requirements

A. A spirituous liquor license shall be issued only after satisfactory showing of the capability, qualifications and reliability of the applicant and, with the exception of wholesaler, producer, government or club licenses, that the public convenience requires and that the best interest of the community will be substantially served by the issuance. If an application is filed for the issuance of a transferable or nontransferable license, other than for a craft distiller license, a microbrewery license or a farm winery license, for a location that on the date the application is filed has a valid license of the same series, or in the case of a restaurant license application filed for a location with a valid hotel-motel license, issued at that location, there shall be a rebuttable presumption that the public convenience and best interest of the community at that location was established at the time the location was previously licensed. The presumption may be rebutted by competent contrary evidence. The presumption shall not apply once the licensed location has not been in use for more than one hundred eighty days and the presumption shall not extend to the personal qualifications of the applicant.

B. The license shall be to manufacture, sell or deal in spirituous liquors only at the place and in the manner provided in the license. A separate license shall be issued for each specific business, and each shall specify:

1. The particular spirituous liquors that the licensee is authorized to manufacture, sell or deal in.

2. The place of business for which issued.

3. The purpose for which the liquors may be manufactured or sold.

C. A spirituous liquor license issued to a bar, a liquor store or a beer and wine bar shall be transferable as to any permitted location within the same county, if the transfer meets the requirements of an original application. A spirituous liquor license may be transferred to a person qualified to be a licensee, if the transfer is pursuant to either judicial decree, nonjudicial foreclosure of a legal or equitable lien, including security interests held by financial institutions pursuant to section 4-205.05, a sale of the license, a bona fide sale of the entire business and stock in trade, or other bona fide transactions that are provided for by rule. Any change in ownership of the business of a licensee, directly or indirectly, as defined by rule is deemed a transfer, except that there is no transfer if a new artificial person is added to

1 the ownership of a licensee's business but the controlling persons remain
2 identical to the controlling persons that have been previously disclosed
3 to the director as part of the licensee's existing ownership.

4 D. All applications for a new license pursuant to section 4-201 or
5 for a transfer to a new location pursuant to subsection C of this section
6 shall be filed with and determined by the director, except when the
7 governing body of the city or town or the board of supervisors receiving
8 an application pursuant to section 4-201 orders disapproval of the
9 application or when the director, the state liquor board or any aggrieved
10 party requests a hearing. The application shall then be presented to the
11 state liquor board, and the new license or transfer shall not become
12 effective unless approved by the state liquor board.

13 E. A person who assigns, surrenders, transfers or sells control of
14 a liquor license or business that has a spirituous liquor license shall
15 notify the director within thirty business days after the assignment,
16 surrender, transfer or sale. A spirituous liquor license shall not be
17 leased or subleased. A concession agreement entered into under section
18 4-205.03 is not considered a lease or sublease in violation of this
19 section.

20 F. If a person other than those persons originally licensed
21 acquires control over a license or licensee, the person shall file notice
22 of the acquisition with the director within thirty business days after the
23 acquisition of control and a list of officers, directors or other
24 controlling persons on a form prescribed by the director. There is no
25 acquisition of control if a new person is added to the ownership of a
26 licensee's business but the controlling persons remain identical to the
27 controlling persons that have been previously disclosed to the director as
28 part of the licensee's existing ownership. All officers, directors or
29 other controlling persons shall meet the qualifications for licensure as
30 prescribed by this title. On request, the director shall conduct a
31 preinvestigation before the assignment, sale or transfer of control of a
32 license or licensee, the reasonable costs of which, not more than \$1,000,
33 shall be borne by the applicant. The preinvestigation shall determine
34 whether the qualifications for licensure as prescribed by this title are
35 met. On receipt of notice of an acquisition of control or request of a
36 preinvestigation, the director, within fifteen days after receipt, shall
37 forward the notice of the acquisition of control to the local governing
38 body of the city or town, if the licensed premises is in an incorporated
39 area, or the county, if the licensed premises is in an unincorporated
40 area. The director shall include in the notice to the local governing
41 body written instructions on how the local governing body may examine,
42 free of charge, the results of the department's investigation regarding
43 the capabilities, qualifications and reliability of all officers,
44 directors or other controlling persons listed in the application for

1 acquisition of control. The local governing body, or the governing body's
2 designee, may provide the director with a recommendation, either in favor
3 of or against the acquisition of control, within sixty days after the
4 director mails the notice, but section 4-201 does not apply to the
5 acquisition of control provided for in this section. A local governing
6 body may charge not more than one fee, regardless of the number of
7 licenses held by the applicant, for review of one or more applications for
8 acquisition of control submitted to the department at the same time and
9 for the same entity. Within one hundred five days after filing the notice
10 of the acquisition of control, the director shall determine whether the
11 applicant is qualified, capable and reliable for licensure. A
12 recommendation by the local governing body, or the governing body's
13 designee, against the acquisition of control or denial by the director
14 shall be set for a hearing before the board. The person who has acquired
15 control of a license or licensee has the burden of an original application
16 at the hearing, and the board shall make its determination pursuant to
17 section 4-202 and this section with respect to capability, reliability and
18 qualification.

19 G. A licensee who holds a license in nonuse status for more than
20 five months shall be required to pay a \$100 surcharge for each month
21 thereafter. The surcharge shall be paid at the time the license is
22 returned to active status. A license automatically reverts to the state
23 after being held in continuous nonuse for more than thirty-six months.
24 The director may waive the surcharge and may extend the time period
25 provided in this subsection for good cause if the licensee files a written
26 request for an extension of time to place the license in active status
27 before the date of the automatic reversion. Unless the reverted license
28 of the licensee has been subsequently reissued, the director shall relieve
29 a licensee or its legal representative from a prior license reversion
30 under this section if the request for such relief is filed in writing not
31 later than two years after the date of reversion. A license shall not be
32 deemed to have gone into active status if the license is transferred to a
33 location that at the time of or immediately before the transfer had an
34 active license of the same type, unless the licenses are under common
35 ownership or control.

36 H. A restructuring of a licensee's business is not an acquisition
37 of control, a transfer of a spirituous liquor license or the issuance of a
38 new spirituous liquor license if both of the following apply:

39 1. All of the controlling persons of the licensee and the new
40 business entity are identical.

41 2. There is no change in control or beneficial ownership.

42 I. If subsection H of this section applies, the licensee's history
43 of violations of this title is the history of the new business entity.
44 The director may prescribe a form and shall require the applicant to

1 provide the necessary information to ensure compliance with this
2 subsection and subsections F and G of this section.

3 J. Notwithstanding subsection B of this section, the holder of a
4 retail license in this state having off-sale privileges, except a bar,
5 beer and wine bar or restaurant licensee, may take orders by telephone,
6 mail, fax or catalog, through the internet or by other means for the sale
7 and delivery of spirituous liquor off of the licensed premises to a person
8 in this state in connection with the sale of spirituous liquor.
9 Notwithstanding the definition of "sell" prescribed in section 4-101, the
10 placement of an order and payment pursuant to this section is not a sale
11 until delivery has been made. At the time that the order is placed, the
12 licensee shall inform the purchaser that state law requires a purchaser of
13 spirituous liquor to be at least twenty-one years of age and that the
14 person accepting delivery of the spirituous liquor is required to comply
15 with this state's age identification requirements as prescribed in section
16 4-241, subsections A and K. The licensee may maintain a delivery service
17 and may contract with one or more independent contractors, that may also
18 contract with one or more independent contractors, or may contract with a
19 common carrier for delivery of spirituous liquor if the spirituous liquor
20 is loaded for delivery at the premises of the retail licensee in this
21 state and delivered in this state. Except if the person delivering the
22 order has personally retrieved and bagged or otherwise packaged the
23 container of spirituous liquor for delivery and the licensee records, or
24 requires to be recorded electronically, the identification information for
25 each delivery, all containers of spirituous liquor delivered pursuant to
26 this subsection shall be conspicuously labeled with the words "contains
27 alcohol, signature of person who is twenty-one years of age or older is
28 required for delivery". The licensee is responsible for any violation of
29 this title or any rule adopted pursuant to this title that is committed in
30 connection with any sale or delivery of spirituous liquor. Delivery must
31 be made by an employee of the licensee or other authorized person as
32 provided by this section who is at least twenty-one years of age to a
33 customer who is at least twenty-one years of age and who displays an
34 identification at the time of delivery that complies with section 4-241,
35 subsection K. The retail licensee shall collect payment for the full
36 price of the spirituous liquor from the purchaser before the product
37 leaves the licensed premises. The director shall adopt rules that set
38 operational limits for the delivery of spirituous liquors by the holder of
39 a retail license having off-sale privileges. With respect to the delivery
40 of spirituous liquor, for any violation of this title or any rule adopted
41 pursuant to this title that is based on the act or omission of a
42 licensee's employee or other authorized person, the mitigation provision
43 of section 4-210, subsection G applies, with the exception of the training
44 requirement. For the purposes of this subsection and notwithstanding the

1 definition of "sell" prescribed in section 4-101, section 4-241,
2 subsections A and K apply only at the time of delivery. For the purposes
3 of compliance with this subsection, an independent contractor, a
4 subcontractor of an independent contractor, the employee of an independent
5 contractor or the employee of a subcontractor is deemed to be acting on
6 behalf of the licensee when making a delivery of spirituous liquor for the
7 licensee.

8 K. Except as provided in subsection J of this section, Arizona
9 licensees may transport spirituous liquors for themselves in vehicles
10 owned, leased or rented by the licensee.

11 L. Notwithstanding subsection B of this section, an off-sale retail
12 licensee may provide consumer tasting of wines off of the licensed
13 premises subject to all applicable provisions of section 4-206.01.

14 M. The director may adopt reasonable rules to protect the public
15 interest and prevent abuse by licensees of the activities permitted such
16 licensees by subsections J and L of this section.

17 N. Failure to pay any surcharge prescribed by subsection G of this
18 section or failure to report the period of nonuse of a license shall be
19 grounds for revocation of the license or grounds for any other sanction
20 provided by this title. The director may consider extenuating
21 circumstances if control of the license is acquired by another party in
22 determining whether or not to impose any sanctions under this subsection.

23 O. If a licensed location has not been in use for three years, the
24 location must requalify for a license pursuant to subsection A of this
25 section and shall meet the same qualifications required for issuance of a
26 new license except when the director deems that the nonuse of the location
27 was due to circumstances beyond the licensee's control and an extension of
28 time has been granted pursuant to subsection G of this section.

29 P. If the licensee's interest is forfeited pursuant to section
30 4-210, subsection L, the location shall requalify for a license pursuant
31 to subsection A of this section and shall meet the same qualifications
32 required for issuance of a new license except when a bona fide lienholder
33 demonstrates mitigation pursuant to section 4-210, subsection K.

34 Q. The director may implement a procedure for the issuance of a
35 license with a licensing period of two years.

36 R. For any sale of a farm winery or craft distiller or change in
37 ownership of a farm winery or craft distiller directly or indirectly, the
38 business, stock-in-trade and spirituous liquor may be transferred with the
39 ownership, in compliance with the applicable requirements of this title.

40 S. Notwithstanding subsection B of this section, bar, beer and wine
41 bar, liquor store, beer and wine store or restaurant licensees in this
42 state may take orders by telephone, mail, fax or catalog, through the
43 internet or by other means for the sale and delivery of spirituous liquor
44 off the licensed premises as follows:

1 1. Bar licensees for beer, wine, distilled spirits and mixed
2 cocktails.

3 2. Beer and wine bar licensees for beer and wine.

4 3. Liquor store licensees for beer, wine, distilled spirits and
5 mixed cocktails.

6 4. Beer and wine store licensees for beer and wine.

7 5. Restaurant licensees for any of the following:

8 (a) Mixed cocktails, with the sale of menu food items for
9 consumption on or off the licensed premises, if the restaurant holds a
10 permit issued pursuant to section 4-203.07 and section 4-205.02,
11 subsection K or a lease pursuant to section 4-203.06.

12 (b) Beer if the restaurant holds a permit issued pursuant to
13 section 4-205.02, subsection H.

14 (c) Beer, wine and distilled spirits if the restaurant holds an
15 off-sale privileges lease with a bar or liquor store pursuant to section
16 4-203.07.

17 (d) Beer and wine if the restaurant holds an off-sale privileges
18 lease with a beer and wine bar pursuant to section 4-203.07.

19 T. Notwithstanding the definition of "sell" prescribed in section
20 4-101, placing an order and paying for that order pursuant to subsection S
21 of this section is not a sale until delivery has been made. At the time
22 that the order is placed, the licensee shall inform the purchaser that
23 state law requires a purchaser of spirituous liquor to be at least
24 twenty-one years of age and that the person accepting delivery of the
25 spirituous liquor is required to comply with this state's age
26 identification requirements as prescribed in section 4-241, subsections A
27 and K. The licensee may maintain a delivery service and may contract with
28 one or more alcohol delivery contractors registered pursuant to section
29 4-205.13 for delivery of spirituous liquor if the spirituous liquor is
30 packaged and tamperproof sealed by the bar, beer and wine bar, liquor
31 store, beer and wine store or restaurant licensee or the licensee's
32 employee and is loaded for delivery at the premises of the restaurant,
33 beer and wine bar, liquor store, beer and wine store or bar licensee in
34 this state and delivered in this state on the same business day. A liquor
35 store or beer and wine store licensee may contract with one or more
36 independent contractors as provided in subsection J of this section for
37 delivery of spirituous liquor if the spirituous liquor is loaded for
38 delivery at the premises of the liquor store or beer and wine store
39 licensee in this state and delivered in this state on the same business
40 day. All containers of spirituous liquor delivered pursuant to subsection
41 S of this section shall be tamperproof sealed and conspicuously labeled
42 with the words "contains alcohol, signature of person who is twenty-one
43 years of age or older is required for delivery". The licensee is
44 responsible for any violation of this title or any rule adopted pursuant

1 to this title that is committed in connection with any sale or delivery of
2 spirituous liquor. Delivery must be made by an employee of the licensee
3 or an employee or authorized independent contractor of a registered
4 alcohol delivery contractor as provided by this section who is at least
5 twenty-one years of age and delivery must be made to a customer who is at
6 least twenty-one years of age and who displays an identification at the
7 time of delivery that complies with section 4-241, subsection K. The
8 restaurant, beer and wine bar, liquor store, beer and wine store or bar
9 licensee shall collect payment for the full price of the spirituous liquor
10 from the purchaser before the product leaves the licensed premises. The
11 director shall adopt rules that set operational limits for the delivery of
12 spirituous liquor pursuant to this subsection and subsection S of this
13 section with respect to the delivery of spirituous liquor. For any
14 violation of this title or any rule adopted pursuant to this title that is
15 based on the act or omission of a licensee's employee or a registered
16 alcohol delivery contractor, the mitigation provision of section 4-210,
17 subsection G applies, with the exception of the training requirement. For
18 the purposes of this subsection and notwithstanding the definition of
19 "sell" prescribed in section 4-101, section 4-241, subsections A and K
20 apply only at the time of delivery. An alcohol delivery contractor, a
21 subcontractor of an alcohol delivery contractor, an employee of an alcohol
22 delivery contractor or an employee of a subcontractor is deemed to be
23 acting on behalf of the licensee when making a delivery of spirituous
24 liquor for the licensee. For the purposes of this subsection, "business
25 day" means between the hours of 6:00 a.m. of one day and 2:00 a.m. of the
26 next day.

27 U. A licensee that has off-sale privileges and that delivers
28 spirituous liquor as prescribed in this section shall complete a written
29 record of each delivery at the time of delivery. The written record shall
30 include all of the following:

- 31 1. The name of the licensee making the delivery.
- 32 2. The complete address of the licensee making the delivery.
- 33 3. The licensee's license number.
- 34 4. The date and time of the delivery.
- 35 5. The address where the delivery was made.
- 36 6. The type and brand of all spirituous liquor delivered.

37 V. A licensee that has off-sale privileges and that delivers
38 spirituous liquor as prescribed in this section shall obtain the following
39 information from the individual who accepts delivery:

- 40 1. The individual's name.
- 41 2. The individual's date of birth.
- 42 3. The individual's signature. The licensee making the delivery

43 may use an electronic signature system to comply with the requirements of
44 this paragraph.

1 W. NOTWITHSTANDING ANY OTHER LAW, AS OF THE EFFECTIVE DATE OF THIS
2 AMENDMENT TO THIS SECTION, THE DEPARTMENT MAY NOT ISSUE AN AVAILABLE
3 LICENSE PURSUANT TO SECTION 4-206.01, SUBSECTION B OR C TO A LOCATION THAT
4 IS IN AN AREA OF LAND THAT IS SURROUNDED ON ALL SIDES BY AN INDIAN
5 RESERVATION IN THIS STATE. FOR THE PURPOSES OF THIS SUBSECTION,
6 "SURROUNDED ON ALL SIDES" MEANS AN AREA OF LAND THAT IS SURROUNDED ON ALL
7 SIDES BY AN INDIAN RESERVATION EXCEPT FOR AN AREA OF LAND THAT IS
8 IDENTIFIED BY THE STATE LAND DEPARTMENT AS STATE LAND INGRESS AND EGRESS
9 POINTS.